

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and the Bailit Health Purchasing LLC, with a principal place of business in Needham, MA (hereafter called "Contractor"). The Contractor's form of business organization is a C Corporation. The Contractor's local address is 56 Pickering Street, Needham, MA. 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 implementation of each of the three payment reform pilots related to the Health Benefits Exchange. 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 \$376,428.
4. **Contract Term.** The period of Contractor's performance shall begin on February 10, 2012 and end on October 15, 2012. The State and the Contractor have the option of renewing this contract for up to two (2) one-year terms.
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, 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 27 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
- 3). Attachment C
- 4). Attachment A

- 5). Attachment B
- 6). Attachment E
- 7). Attachment F

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

**BY THE STATE OF VERMONT:**

**BY THE CONTRACTOR:**

\_\_\_\_\_  
MARK LARSON, COMMISSIONER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
MICHAEL BAILIT, CEO

\_\_\_\_\_  
DATE

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

### **General Conditions**

- This contract is funded by federal grant funding. All terms of this contract are subject to any requirements necessary to obtain and maintain such funding. No State funds will be used to fund this contract.
- Richard Slusky and Betsy Forrest of DVHA shall serve as the State's primary contacts for this contract. Michael Bailit shall serve as the Contractor's primary contact for this contract. Such contacts may be changed by written notice to the other party.
- The State and the Contractor shall meet weekly, in person or by conference call, to review progress on contract work.
- The Contractor and the State acknowledge that much of the work performed under this contract is interrelated with other Exchange development work occurring simultaneously. As such, Contractor and its subcontractors will coordinate with other Exchange contractors as needed.
- For all deliverables, unless otherwise agreed upon in advance by the State and the Contractor, Contractor will submit a draft deliverable four weeks prior to the final deliverable due date. The State will have one week to provide feedback to the Contractor, after which the Contractor will have one week to submit a revised draft to the State. The State will have one week to review the second draft and provide comments to the Contractor, after which the Contractor will provide the final deliverable within one week of receiving the State's comments. In some situations the State may waive the right to a second draft.
- Work plan deliverables for each section will include tasks, timelines, Contractor task lead, and key Contractor personnel.

### **Introduction**

The State is seeking to use its Insurance Exchange as a mechanism for reducing administrative complexity in the health insurance market and thereby reducing the transaction costs associated with health insurance. The State is also pursuing all-payer rate setting as a strategy for achieving several goals: controlling health care cost increases, assuring greater equity in payments from carriers and between the public and private sectors, assuring greater equity across health care providers in payments, rationalizing and simplifying payment methodologies across payers, allowing for the financial sustainability of efficient and effective providers, and implementing common approaches to payment innovation to improve health system efficiency and quality of care. Act 48 provided the authority for the State to pursue both comprehensive administrative simplification and all-payer rate setting.

The State proposes to use a portion of the Establishment Grant funding to examine methodologies for implementing all-payer rates within the Insurance Exchange and for coordinating provider payment policies in the Exchange with those used by public programs and private carriers outside the Exchange. The State will also conduct modeling of the impact of implementing all-payer rates within the Exchange, of applying those rates to public payers in terms of the cost or savings to the state, of applying those rates to private payers, and of the impact on specific types of providers, individual institutions, or areas of the state. Specific guidance is sought on potential approaches to coordinating Vermont's all-payer approach with Medicare payment policies and innovations in Medicare payment.

The State thus far has identified three payment models that will be implemented to meet these goals. Each of these models uses the State's hospital systems as the anchor provider.

1. Creation of bundled payments made to hospitals for specific diagnoses or procedures for the full array of services in the acute care setting (and potentially post-acute care setting). Payments would be shared between hospitals and professional service providers (and potentially other post-acute care providers) and the savings gained would be shared among the different provider types.
2. Development of hospital/physician budgets where the hospital receives a fixed amount of revenue based on historical utilization, regardless of future case mix or utilization. In exchange for a more predictable revenue stream, hospitals would be incentivized to build efficiencies and reduce utilization rather than maximizing revenue based on volume. Physicians employed by or affiliated with hospitals would also be encouraged by the hospitals to more effectively manage cases in an effort to reduce inpatient admissions.
3. Development of new, or expansion of existing, prospective population-based payments whereby a hospital system takes on the full risk of a patient in their geographic region and is responsible for the delivery of a broader array of services (there may be some exceptions) beyond those services that occur in the hospital setting.

The introduction of these payment reform models is expected to occur simultaneously, with each being implemented initially as a pilot program. The pilot programs may differ in the level of participation by payers. For example, Medicare has announced its equivalent to Option #1 above—the Bundled Payment for Care Improvement (BPCI) initiative—which will allow hospitals to gain share with physicians for Medicare cases. The State may decide to piggy-back off the Medicare BPCI and expand this to other payers. The hospital global budgets contemplated in Option #2 may start out with select large commercial payers in the State and possibly Medicaid while the State seeks approval to include Medicare in the global budget. The development of population-based payments identified as Option #3 appear to be more long-term and may begin with a targeted population group (e.g. defined by age or condition of interest) before expanding to additional populations and ultimately all populations in a geographic region. It is also possible that a hospital will start out in Option #2 before migrating to Option #3 in future years.

The State's goal is to have at least one hospital participating in each of the three payment models by January 2013. The State will evaluate the effectiveness of these pilots and will continue to refine the models with plans to expand the pilots (with or without adjustments) in Calendar Year 2013. Ultimately, after each pilot is evaluated, the State will decide if each payment model will be used by entities participating in the Exchange, either in a mandatory or voluntary fashion.

### **Proposed Work Plan**

It should be noted that the Bailit team has proposed hours for the State to implement each pilot on its own. Given the anticipated level of fluidity of the level of effort to initiate each pilot, however, it is expected that the level of resources required may shift between the three pilot initiatives. For example, it may be true that the resources assigned to the Population-based Global Payment pilot may be folded into the Global Hospital Budget pilot. Likewise, since each pilot uses hospitals as the anchor provider, some of the initial research and analysis will actually be shared across the three pilots, especially if a particular hospital participates in more than one pilot.

## Section I: Project Initiation

By March 9, 2012, the Contractor shall:

1. Meet with State staff (DVHA, Green Mountain Care Board (GMCB), BISHCA) on the project approach, timing to initiate the pilots, data sources and data availability.
2. Formulate initial options and talking points for meetings with hospitals on each of the three pilots.
3. Refine the work plan, as needed, after the kickoff meeting.

Deliverable:

Report on meetings with State staff, provide initial options and talking points for meetings with the hospitals. Refine the work plan.

## Section II: Bundled Payment Pilot Development

The State submitted a letter of intent to CMS with the Vermont Association of Hospitals and Health Systems (VAHHS) as a “convener” of participating health care providers. As a result it is expected that meetings will be held with hospitals that may be submitting applications to Medicare to learn more about their rationale for applying. The Contractor will leverage this knowledge to assist the State in broadening the bundled payment pilot beyond just Medicare payments, assuming that this is a direction that the State is interested in moving.

In the State/VAHHS letter, it was indicated that there was interest in developing either a “Model #2” (acute care plus post-acute care option using traditional FFS payments with a retrospective reconciliation) or a “Model #4” pilot (acute care stay only but paid prospectively with no reconciliation). Because of the variety of applications that may be submitted by Vermont hospitals, there is an assumption that there may be as many as three different bundled payment services, based around specific MS-DRGs, that may be considered for modeling in the Vermont bundled payment pilot. These services may piggy-back off proposals submitted by one or more hospitals to Medicare for its BCPI initiative or they may be unrelated to the applications to Medicare.

Although Medicare will only consider applications for its initiative from hospitals that are paid in the Medicare Inpatient Prospective Payment System (IPPS), it is assumed that any hospital—including critical access hospitals—may participate in a Vermont bundled payment pilot (with the assumption that Medicare would not participate if critical access hospitals were included in Vermont’s pilot).

As a result the Contractor shall perform the following tasks to initiate a bundled payment pilot with proposed timing of tasks as follows:

### *2<sup>nd</sup> Half of March*

1. Convene meeting with hospitals who are submitting Medicare applications about the content of their applications.
2. Write white paper to summarize options for piggy-backing off of Medicare applications being submitted with other payers or alternative models outside of Medicare applications.

### *April*

3. Review options with GMCB—which services to include in the bundled payment option, which payers to include in each option. It is assumed that there may be up to three different bundled

payment options for consideration initially and that the payers that will participate may vary based on the bundled service payment proposed.

4. Review options with the State and commercial payers.

*May*

5. Determine initial go/no decision from each payer on each of (up to three) bundled payment pilots (will not obligate the payer, just a sign-off to move forward).
6. Prepare and give presentation on high level options, including to those hospitals that are not submitting a Medicare application.
7. Determine initial go/no decision from each hospital on each of (up to three) bundled payment pilots (will not obligate the hospital, just a sign-off to move forward).
8. Obtain listing of all affiliated post-acute/professional practices that would be included in the analysis of bundled payment modeling.
9. Develop a data extract request from the Vermont Healthcare Claims Uniform Reporting and Evaluation System (VHCURES). VHCURES, Medicaid (if data not yet in VHCURES), and (potentially) Medicare for relevant data for options to design for hospitals/payers that are interested in the pilot.

*June*

10. Obtain rates for relevant services that would be included in the bundled payment from payers that are interested in participating in the pilot.
11. Intake and validate data received from data sources.

*July*

12. Price out payments as they have been made using FFS rates, by payer, for each bundled payment option that is under consideration.
13. If applicable and data is available, overlay outcomes data with payment data for each bundled payment option.

*August*

14. Report back variations to the State on historical FFS payment rates and outcomes for each bundled payment option.
15. Finalize initial bundled payment proposal(s) to State. This may include both retrospective and prospective options.
16. Run iterations on the options, as needed, before presenting to hospitals.
17. Outline the operational flow of payments and reporting requirements.

*September*

18. Present the State's proposal to each hospital and participating payer for each bundled payment option.
19. Run iterations on the options, as needed, based on hospital and payer feedback.

*October*

20. Prepare and present final proposal to hospitals, payers and medical society or other professionals on each bundled payment option.
21. Obtain confirmation of pilot participation from each hospital and payer.
22. Draft methodology and operational flow/work plan document for moving forward.

**Deliverable:**

Provide a final report on the Bundled Payment Initiative that will document meetings with hospitals who are interested in participating in the program including the white paper summarizing the options for including payers other than Medicare. The report should note the services to include in the bundled payments, and which payers to include in each option. The report should indicate how the bundled payment pilots were selected, including a discussion of the data requirements, how services were selected for inclusion, and how pricing of the bundles was achieved.

Historical variations on FFS payment rates and outcomes for each bundled payment option should be included. Potential or expected savings should be identified. Operational flow of payments and reporting requirements expected of the hospitals should be noted. A draft of the methodology and operational flow/work plan for moving forward will be part of the final report.

### Section III: Global Hospital Budget Pilot Development

It is anticipated that the development of global hospital budgets may include multiple phases before its final development. Each phase (which may be scheduled to implement each October 1 in line with the hospital's fiscal year) will integrate new aspects into the determination of the ultimate budget, the risk level associated with the budget, and the oversight of the budgeting process. This work plan schedules tasks in anticipation of global budget pilot that would be ready for implementation on October 1, 2012. In the first year of the pilot, the State envisions that payments will continue to be made by each participating payer in the traditional fee-for-service format but that there will be a retrospective comparison against the target budget established whereby the hospital will either receive a supplemental payment if their per case payments are below the global budget or the hospital will return money if per case payments are made above the global budget. In future years, payments may be made in an alternative method and the Contractor will be expected to assist in laying out these options before the first year of the pilot is implemented.

In order to start the process for building a global hospital budget, the Contractor will assist the State in creating a briefing book of historical utilization, payment and financial information that will serve as the baseline when options for negotiating the appropriate global budget level are being discussed. Using the pilot hospital(s) as a testing ground, the briefing book will be built to be easily replicated in future years as other hospitals come on board using this payment option.

Once the global budget methodology pilot has been defined, the Contractor will assist the State in seeking a waiver from the Medicare Inpatient and Outpatient Prospective Payment methodologies (IPPS and OPSS) so that Medicare cases may ultimately be included in future years of the global budget. The State will most likely wish to obtain waivers from the anti-kickback, Stark and civil monetary policy (CMP) laws in order to enable hospitals operating under Global Budgets to enter into cooperative arrangements with community physicians to share savings associated with better care management and coordination. The Contractor will utilize their subcontractor, Robert Murray to build Vermont's case in seeking this waiver authority early in the process.

The Contractor shall perform the following tasks to initiate a global hospital budget pilot with proposed timing of tasks as shown below:

#### *Early March*

1. Convene a meeting with State representatives to outline and describe the Global Budget options that can be applied to hospitals operating in different parts of the state experiencing different market dynamics. Options will most likely include:
  - a. Total Patient Revenue model, as implemented in Maryland and the Finger Lakes Region in New York in the 1980s;
  - b. Population-based Rate Setting model, as implemented in Maryland for more dominant hospitals with overlapping hospital service areas; and
  - c. Global Budget model based on patient attribution methodology (which depends on the availability of all-payer claims data sufficient enough to generate a budget)

2. Discuss with BISHCA and Onpoint the availability of data in VHCURES for possible use in developing a patient attribution methodology.
3. Outline the elements of the hospital-specific briefing books that will be created for each hospital that decides to move forward in the process. It is assumed that the metrics that will be tracked will include data points from the prior three to five years and will be tracked separately by major payer (commercial, Medicare, Medicaid) when data is available. The data in the briefing book may ultimately be used for negotiations on the final global budget, future monitoring of the budget, or for evaluation of the pilot itself.
4. Identify which metrics in the briefing book and patient attribution methodology will use secondary sources (e.g. Onpoint, BISHCA, VITL, UVM VCHIP) and which will require analyses specific to this engagement (B&A analysis of VHCURES or other data sources, information provided directly by individual hospitals).
5. Develop a data request for VHCURES, Medicaid, and potentially Medicare for primary data collection (presumably five years of data CY 2007-2011).
6. Develop data requests for relevant secondary data sources.

*Late March*

7. Tabulate data from secondary sources that will be used in the briefing book.
8. Compile and prepare VHCURES datasets for primary data analysis.
9. Identify hospital geographic areas and conduct hospital market share analyses sufficient to identify candidate hospitals for each version of the Global Budget models stated in Step 1.
10. Once the proposed strategy for developing Global Budgets is approved by the State, prepare a working paper outlining the basic characteristics and operating elements of each Global Budget model. This paper could be distributed to VAHHS and Vermont hospitals.

*Early April*

11. Conduct a series of presentations for candidate hospitals describing the characteristics and operational components of each of the Global Budget models along with recommendations on which models would be best suited for each candidate hospital. It is the assumption of the State and Contractor that these conversations, and the associated preparatory analysis, may include up to five candidate hospitals: Fletcher Allen Health Care (FAHC), Rutland Regional Medical Center, Northeastern Vermont Regional Medical Center, Porter Medical Center, and Springfield Medical Care Systems.
12. Concurrent with the development of different Global Budget options, the team will provide a working paper that will identify and describe a range of potential quality metrics that can be used to monitor hospital performance for the initial Global Budget pilots and then linked into the broader payment system to provide financial incentives for improved quality of care.
13. Concurrent with the conversations with hospitals, initiate conversations with CMS's CMMI about seeking a waiver from Medicare IPPS, OPDS and CAH payment methodologies and also a waiver from Stark/anti-kickback and CMP. It is expected that these discussions will continue across the duration of the engagement.
14. Summarize questions, concerns, considerations brought forward by each candidate hospital.
15. Hold meeting with payers participating in the Blueprint outlining the State's proposed approach to a pilot for global hospital budget payments. Assumption is that this will include Blue Cross/Blue Shield of Vermont, MVP Health Care, CIGNA and DVHA.

*Late April*

16. Revise the working paper described in Step 10 to address questions, concerns and considerations from candidate hospitals and payers.
17. Obtain initial go/no go for moving forward from each candidate hospital and payer after the initial set of meetings and their review of the State's responses in Step 16.

*Early May*

18. Prepare a briefing book on each pilot hospital for use in negotiation and subsequent monitoring.

19. Formulate and present options for the State's consideration on the methodology for developing a hospital global budget and options for rollout.
20. Run iterations on the options, as needed, before presenting to hospitals and payers.

*Late May*

21. Present State's proposal to each hospital and participating payer for implementing a hospital global budget.
22. Run iterations, as needed, based on hospital and payer feedback.

*June*

23. Present final proposal to hospitals and payers on the global hospital budget.
24. Obtain confirmation of pilot participation from each hospital and payer.

*July*

25. Draft a methodology document and an operational flow/work plan document for moving forward.
26. Develop options for monitoring and evaluating Global Budget performance, integration of additional quality measures and potential refinement of the budgeting process for Year 2 global budget implementation.

*August*

27. In an iterative manner, meet with State staff to review options developed in Step 26 and revise, as needed, in preparation for rollout to the hospitals.

*September*

28. Present State's proposal for ongoing monitoring, quality measures and Year 2 implementation items to the pilot hospitals and payers.
29. Refine options based on hospital and payer feedback and consideration by the State.

**Deliverable:**

Create a briefing book of historical utilization, payment and financial information that will serve as the baseline when options for negotiating the appropriate global budget level are being discussed. The briefing book shall be draft so that it may be easily replicated in future years as other hospitals come on board using this payment option.

Prepare documentation necessary to assist the State in seeking a waiver from the Medicare Inpatient and Outpatient Prospective Payment methodologies (IPPS and OPPI) so that Medicare cases may ultimately be included in future years of the global budget. Assist the State to obtain waivers from the anti-kickback, Stark and civil monetary policy (CMP) laws in order to enable hospitals operating under Global Budgets to enter into cooperative arrangements with community physicians to share savings associated with better care management and coordination.

Provide evidence of meetings with potential participating hospitals at the outset and later at the time for negotiating the global budget, and evidence of meetings between the State and the pilot hospitals throughout the summer in preparation for the final global budget proposal. Present hospital specific briefing books for each hospital interested in participating in this process. The briefing book will include metrics to be tracked, patient attribution methodologies to be used, how the analysis of VHCURES data will be conducted.

Submit a working paper outlining the characteristics and operating elements of each Global Budget Model, including documentation of the discussions with each of the hospitals. The working paper will include a range of quality metrics to be considered to monitor hospital performance. Prepare a briefing book on each hospital for use in negotiations and subsequent monitoring of hospital performance.

Show evidence of assistance provided to the State to seek a waiver from Medicare to allow

Medicare beneficiaries to participate in this initiative.

Develop options for monitoring and evaluating Global Budget performance, integration of additional quality measures and potential refinement of the budgeting process for Year 2.

#### Section IV: Population-based Global Payment Pilot Development

The population-based global payment pilot is the next generation beyond the global hospital budget. Whereas the global hospital budget presumes (at least at the outset) payments based on per case fee-for-service rates, the population-based global payment pilot presumes payments made on per person per month basis where the hospital is at risk for all medical care (as defined in the payment) provided to the defined population in a designated geographic area. Currently the State has some of these Physician Hospital Association (PHO) arrangements in place and is aware that there may be interest from some hospitals to test an expansion of a current population or to test a new population in a pilot using this format.

The pilot would be limited to a selected subset of the overall population whereby the assumptions built into the per-person per-month payment can be tested in isolation against traditional fee-for-service payments. Like the global hospital budget pilot, it may be decided that in the first few years, payments will continue to be made on a fee-for-service basis with a retrospective comparison to the established per person per month payment with an ultimate reconciliation. In future years, the population-based global payment may grow to include additional demographic populations and/or additional services within the per person per month payment. An evaluation plan will also be developed to assess the impact of the expanded population on the global payment developed that is created.

The Contractor shall perform the following tasks to initiate a global hospital budget pilot:

#### *2<sup>nd</sup> Half of March*

1. Initiate conversation with potentially interested PHOs as to what services or populations may be included in a pilot program.
2. Identify initial questions, concerns or considerations brought forward by the PHOs.

#### *April*

3. Formulate responses to the initial questions, concerns or considerations and discuss with the State.
4. Meet with payers that may be interested in participating in the population-based global payment pilot.
5. Reconvene with stakeholders on the State's feedback and determine a go/no go from PHOs and payers for options to model.

#### *May*

6. Identify the services, demographic population(s) and geographic population to use for modeling.
7. Determine the construct for modeling. Note: The PHOs can model options internally for expansions or modifications to existing arrangements using internal data. The Contractor will be involved if the modeling would either (1) begin to involve Medicaid or Medicare, (2) if the State wants the payment arrangements to be built using common unit cost assumptions, or (3) if the State wants to modify the unit cost assumptions. For this first year pilot, the State will rely on the PHOs to present models for commercial claims experience and the Contractor will provide technical assistance in a review manner only.
8. Assess if any additional data sources are needed for modeling.
9. Prepare data request(s) to all relevant sources to collect additional data for modeling beyond what will be prepared by the PHOs, if necessary.

*June*

10. Conduct analyses on data, other than what will be generated by the PHOs, to fit into the models.

*July*

11. Conduct a series of meetings with the interested PHOs to review models developed by them for a proposed population-based global payment pilot and any models developed by the State's team.
12. Run iterations on the options, as needed.
13. Outline the evaluation plan for the pilot and any quality measures to be used and/or tracked in the initial pilot year plus those to consider for subsequent years.
14. Outline the operational flow of payments and reporting requirements.

*August*

15. Present the State's final proposal to candidate PHOs and participating payers for implementing a population-based global payment pilot.
16. Run iterations, as needed, based on the hospital's and payers' feedback.

*September*

17. Obtain confirmation of pilot participation from Fletcher Allen Health Care (FAHC) and each payer.
18. Draft a methodology and operational flow/work plan document for moving forward.
19. Refine the evaluation plan for the pilot and any quality measures to be used in preparation for rollout to the PHOs.

*October*

20. Present State's proposal for ongoing monitoring, quality measures and Year 2 implementation items to the pilot PHOs and payers.
21. Refine options based on PHO and payer feedback and consideration by the State.

**Deliverable:**

Documentation requirements for the final report will be similar to those outlined in Section 3 above. In addition document meetings with stakeholders who may be interested in participating in Population-based payments, including documentation of the services, demographic and geographic populations to use for the modeling. Provide information used to determine the construct of the modeling and any data sources that will need to be used for the modeling construct. Demonstrate methods used to analyze the data requested.

Draft a methodology and operational flow/work plan for moving forward. Develop and refine the evaluation plan for the pilot and any quality measures to be used and/or tracked in the first year and those to consider in subsequent years. Include a proposal to guide the state in its ongoing monitoring of performance and results in the pilot.

**Ad Hoc Tasks**

The Contractor shall perform additional tasks in accordance with the scope of work to be submitted and approved prior to commencement of any additional tasks. Contractor shall submit monthly invoices that include the number of hours worked by staff, as well as a description of the work performed. Contractor shall be reimbursed a single, blended rate of \$250 per hour, inclusive of all travel and other expenses. Contractor will not be reimbursed for other expenses, including travel, supplies, benefits or insurance. A total of 150 hours are authorized for performance of additional work, subject to approved scopes of work.

**Staffing**

Due to the compacted time schedule and the amount of work required, the State recognizes that the

Contractor will work closely with the following subcontractors on all aspects of the project but who will each take responsibility for one of the pilots:

- Mark Podrazik of Burns & Associates (B&A) will serve as the lead on the Bundled Payment Pilot development.
- Robert Murray of Global Health Payment will serve as the lead on the Global Hospital Budget Pilot development and in negotiations with the CMS and CMMI regarding potential waivers from Medicare payment methodologies and from Stark, CMP and anti-kickback laws and regulations.

**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 Contractor shall invoice the State monthly based on hours expended per deliverable up to the section's maximum hourly allotment as specified in the Fee Schedule below. The State will withhold 10% from each monthly invoice to be paid based on receipt of each section final report and satisfactory completion, decided by the State, of each deliverable. Payment of the retainage will be issued upon receipt of a retainage statement from the Contractor itemizing amount withheld per section.

| <b>Fee Schedule</b>                              |                  |                                     |
|--|------------------|-------------------------------------|
| <b>Deliverable</b>                               | <b>Max Hours</b> | <b>Maximum Amount / Deliverable</b> |
| <b>Section I: Project Initiation</b>             | 38               | \$ 10,646                           |
| <b>Section II: Bundled Payment Pilot</b>         | 279              | \$ 66,385                           |
| <b>Section III: Global Hospital Budget Pilot</b> | 659              | \$185,019                           |
| <b>Section IV: Pop-Based Global Payments</b>     | 315              | \$ 76,878                           |
| <b>Ad Hoc Tasks</b>                              | 150              | \$ 37,500                           |
| <b>Contract Total</b>                            |                  | <b>\$376,428</b>                    |

2. Invoices shall be submitted on the Contractor's official letterhead, signed by an authorized representative of the Contractors organization, reference this contract's number and be submitted to:

Business Office, Contracting Unit  
Department of Vermont Health Access  
312 Hurricane Lane  
Williston, VT 054953

3. Variance of the budget shall not exceed 10% without prior approval from State. Written requests for such approvals must first be submitted by the Contractor prior to the expenditure of funds in excess of the above budgeted line items.

4. Total maximum payable under this contract shall not exceed \$376,428

**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 \$1,000,000 per occurrence, and \$1,000,000 aggregate.

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

9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, 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 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.

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 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, Office, or Division of Vermont Health Access** (“Covered Entity”) and **Bailit Health Purchasing** as of **February 10, 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 it was disclosed to the person and (b) the person notifies Business Associate, within three business days (who in turn will notify Covered Entity within three business days after receiving notice of a Breach as specified in Section 5.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in this Section must be of the minimum amount of PHI necessary to accomplish such purposes.

4. **Safeguards.** Business Associate shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

5. **Documenting and Reporting Breaches.**

5.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI as soon as it (or any of its employees or agents) become aware of any such Breach, and in no case later than three (3) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

5.2 Business Associate shall provide Covered Entity with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it.

5.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce does not pose a significant risk of harm to the affected individuals, it shall document its assessment of risk. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low risk of harm. When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity.

6. **Mitigation and Corrective Action.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity.

7. **Providing Notice of Breaches.**

7.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI

for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR §164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate.

- 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.

**12. Books and Records.** Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity upon Covered Entity's request in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

**13. Termination.**

13.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 17.7.

13.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate this Contract without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate this Contract without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under this Contract, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

**14. Return/Destruction of PHI.**

14.1 Business Associate in connection with the expiration or termination of this Contract shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this Contract that Business Associate still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI. Business Associate shall certify in writing for Covered Entity (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI. Business Associate is to provide this certification during this thirty (30) day period.

14.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of

this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI.

15. **Penalties and Training.** Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.
16. **Security Rule Obligations.** The following provisions of this Section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.
  - 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 it receives from Covered Entity or creates or receives on behalf of Covered Entity under this Contract even if some of that information relates to specific services for which Business Associate may not be a “Business Associate” of Covered Entity under the Privacy Rule.
- 17.7 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 1/31/11)

## 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 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.