

AMENDMENT

It is agreed by and between the State of Vermont, Department of Vermont Health Access (hereafter called the "State") and Goold Health Systems, Inc., an Emdeon company with a principal place of business in Augusta, Maine (hereafter called "Contractor"), that the contract on the subject of personal services for the Vermont Health Services Enterprise Pharmacy Benefit Manager, effective May 1, 2014, is hereby amended effective June 29, 2015, as follows:

**1. By deleting in Attachment A, Section III.e (Specialty Pharmacy) on page 9 of 150 and substituting in lieu thereof the following Section III.e:**

e. Specialty Pharmacy

The Contractor shall provide Specialty Pharmacy Services to beneficiaries of Vermont's publicly funded programs. A Specialty Pharmacy is a pharmacy, enrolled as a Vermont Medicaid provider, which provides specialty pharmacy services to Vermont beneficiaries. Specialty pharmacy services includes but is not limited to: dispensing specialty pharmacy medications, assuring the successful delivery of such medications to beneficiaries, and providing educational services to beneficiaries regarding managing their disease and medications. This education may include, for example, collaboration with prescribers and other members of the patient's health care team to assure medication compliance, adherence, and successful management of side effects.

Pursuant to Attachment C, section 15, if the Contractor chooses to subcontract Specialty Pharmacy under this agreement, the Contractor must first fill out and submit the Request for Approval to Subcontract form Attachment G (Required Forms) in order to seek approval from the State prior to signing an agreement with any third party. Upon receipt of the Request for Approval to Subcontract form, the State shall review and respond to the request within five (5) business days. Under no circumstance shall the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Request for Approval to Subcontract form to:

Nancy Hogue, VT Pharmacy Director  
Department of Vermont Health Access  
312 Hurricane Lane  
Williston, VT 05495  
[nancy.hogue@state.vt.us](mailto:nancy.hogue@state.vt.us)

Karen Wingate, Financial Director  
Department of Vermont Health Access  
312 Hurricane Lane  
Williston, VT 05495  
[karen.wingate@state.vt.us](mailto:karen.wingate@state.vt.us)

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

For the avoidance of doubt, the Contractor shall remain liable for the satisfactory performance of all work required under this Contract. Additionally, a prior written approval under this section will not constitute an amendment to the Contract unless it changes the general terms and conditions or the terms of payment in the base Contract.

A product can be classified as a specialty pharmaceutical if:

- i. It requires a difficult or unusual process of delivery to the patient (special preparation, handling, storage, inventory, distribution, Risk Evaluation and Mitigation Strategy (REMS) programs, data collection, or administration); or
- ii. It requires patient management services prior to or following administration (e.g., compliance monitoring and the use of clinical disease management protocol and therapeutic support systems).

These services are not generally available at a non-Specialty pharmacy.

The Contractor shall provide access to Specialty Pharmacy Services to beneficiaries who require them. These services are available “24 hours per day, every day of the year, without interruption” and include:

- a. Assisting providers with managing the care of patients with complex diagnoses requiring Specialty medications and specialized management of their medications;
- b. Using multiple methods to educate beneficiaries with self-administration and management of complex medication regimens, including side-effect management; and
- c. Collaborating as needed on patient care teams.

Overall, the Contractor shall ensure that beneficiaries receiving Specialty Pharmacy Services are supported in medication compliance and the management of their disease.

Consistent with Medicaid rules, Contractor shall not refuse to dispense a prescription to a Medicaid Beneficiary who does not provide the copayment. However, the Beneficiary shall still owe the pharmacy any copayment that is not paid. The Specialty Pharmacy may not charge shipping costs to Beneficiaries. In instances where prior authorization criteria is not met, or the beneficiary has primary insurance that does not cover the specialty medication, the State may authorize coverage for the specialty medication on a case-by-case basis, if the State determines the specialty medication is medically necessary for the patient. State rules on appeals and reconsiderations apply.

The Specialty Pharmacy shall ensure timely shipments of specialty medications to all State beneficiaries, regardless of their location in or out of the State. Medications that require temperature control shall be kept at the appropriate temperature during shipment and delivery. The Specialty Pharmacy shall allow State beneficiaries to request that their medications be shipped to an alternate location, if necessary. The Contractor must ensure that signatures of receipt are received when a package is delivered. The Contractor must provide emergency shipments using local suppliers if necessary if a shipment is delayed or

while a lost shipment is being located. The Specialty Pharmacy shall ensure that each prescription is tracked throughout the delivery process so the medication can more easily be found if it becomes lost. The Specialty Pharmacy shall make every effort to find medications lost in the mail and deliver them to the Member in a timely manner.

The Specialty Pharmacy shall be proactive in providing the recommendations for controlling specialty costs without compromising quality of care. It remains the Department's final decision to allow or to require certain drugs be dispensed through the Specialty Pharmacy. The Contractor's Specialty Pharmacy must abide by the Department's Preferred Drug List and Clinical Criteria Manual. The Specialty Pharmacy shall not allow automatic refills of specialty medications and must make every effort to reduce waste. The Contractor and Specialty Pharmacy shall advise the State about optimal drug sourcing for specialty medications, for example, brown bagging, white bagging, buy and bill and other strategies. The State reserves the right to terminate its relationship with the Contractor's Specialty Pharmacy if service delivery is not to the State's expectations, or if the State decides to solicit better pricing on Specialty pharmaceuticals through a competitive bidding process.

**2. By deleting Attachment B (Payment Provisions) beginning on page 101 of 150 of the base agreement, and substituting in lieu thereof Attachment B beginning on page 4 of 26 of this Amendment 1.**

**3. By deleting Attachment C (Customary Provisions for Contracts and Grants), beginning on page 109 of 150, revised 11/7/12, and substituting in lieu thereof Attachment C revised 3/1/2015 which is an attachment beginning on page 12 of 26 of this Amendment 1.**

**4. By deleting Attachment D (Other Provisions) on page 113 of 150 of the base agreement and substituting in lieu thereof Attachment D beginning on page 16 of 26 of this Amendment 1.**

This amendment consists of 26 pages. Except as modified by this amendment and any previous amendments, all provisions of this contract, (#26324) dated May 1, 2014 shall remain unchanged and in full force and effect.

STATE OF VERMONT

CONTRACTOR

DEPARTMENT OF VERMONT HEALTH ACCESS GOULD HEALTH SYSTEMS, INC.

E-SIGNED by Steven Costantino July 22, 2015  
on 2015-07-22 16:14:08 GMT

STEVEN COSTANTINO, COMMISSIONER DATE  
312 Hurricane Lane, Suite 201  
Williston, VT 05495-2087  
Phone: 802-879-5901  
Email: [Steven.Costantino@state.vt.us](mailto:Steven.Costantino@state.vt.us)  
AHS/DVHA

E-SIGNED by Denise Ceule July 17, 2015  
on 2015-07-17 15:14:53 GMT

DENISE CEULE, ASSISTANT SECRETARY DATE  
Gould Health Systems, Inc., an Emdeon Company  
3055 Lebanon Pike  
Nashville, TN 37214  
Phone: 615.932.3000  
Email: [Dceule@emdeon.com](mailto:Dceule@emdeon.com)

**ATTACHMENT B  
 PAYMENT PROVISIONS**

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

1. **Contract Maximum.** The total maximum amount payable under this contract shall not exceed \$12,926,788.55. All rates set forth in this contract are all-inclusive, no expenses, benefits or insurance will deemed reimbursable to the Contractor by the State Under this contract:

Table B-1 Total Cost Summary Base Years

Description	Total One-time Costs	Year 1	Year 2	Year 3	Total Ongoing Costs	Total Costs
Implementation / Configuration	\$1,918,775.75					\$1,918,775.75
Contingency (Budget for Unanticipated Tasks)	\$110,047.50	\$113,348.90	\$116,749.39	\$120,251.87	\$350,350.16	\$460,397.66
<b>Total DDI</b>	<b>\$2,028,823.25</b>	<b>\$113,348.90</b>	<b>\$116,749.39</b>	<b>\$120,251.87</b>	<b>\$350,350.16</b>	<b>\$2,379,173.41</b>
Claims Processing and Operational Support		\$1,243,053.84	\$1,289,683.30	\$1,252,778.58	\$3,785,515.72	\$3,785,515.72
Clinical Program Management and Support		\$1,103,679.76	\$1,146,248.42	\$1,104,065.24	\$3,353,993.42	\$3,353,993.42
Financial Support Services		\$689,329.80	\$715,973.94	\$689,169.76	\$2,094,473.50	\$2,094,473.50
Medication Therapy Management Program-Medicaid		\$425,000.00	\$437,750.00	\$450,882.50	\$1,313,632.50	\$1,313,632.50
<b>Total O&amp;M</b>		<b>\$3,461,063.40</b>	<b>\$3,589,655.66</b>	<b>\$3,496,896.08</b>	<b>\$10,547,615.14</b>	<b>\$10,547,615.14</b>
<b>Total Costs including One-time Costs and Ongoing Costs</b>	<b>\$2,028,823.25</b>	<b>\$3,574,412.30</b>	<b>\$3,706,405.05</b>	<b>\$3,617,147.95</b>	<b>\$10,897,965.30</b>	<b>\$12,926,788.55</b>

In the event the State elects to pursue either of the option years after year 3 of this contract, the Contractor agrees to the prices for its work indicated in its bid to the State as follows:

Table B-2 Optional Years 4 & 5 Costs

Description	Year 4	Year 5	Total Ongoing Costs
Contingency (Budget for Unanticipated Tasks)	\$123,859.43	\$127,575.21	\$251,434.64
Claims Processing and Operational Support	\$1,219,894.73	\$1,340,778.30	\$2,560,673.03
Clinical Program Management and Support	\$1,065,810.74	\$1,183,159.35	\$2,248,970.09
Financial Support Services	\$664,836.77	\$738,616.62	\$1,403,453.39
Medication Therapy Management Program-Medicaid	\$464,408.98	\$478,341.25	\$942,750.23
<b>Total Costs</b>	<b>\$3,538,810.65</b>	<b>\$3,868,470.73</b>	<b>\$7,407,281.38</b>

Work performed under the contingency line item called out in Table B-1 shall not exceed \$460,397.66. The contingency line item shall be billed by Customer Service (CSRs) hour as requested by the State, and will be billed per hour as utilized. As of May 1, 2014 the base rate for CSR hours is \$108.25. Effective January 1, 2015, the hourly rate for billable project CSR hours will be increased from the 2014 base rate of \$108.25 per hour at the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) inflation rate and the per hour State reimbursement for any hours remaining at the termination of the contract will also be increased at the CPI-W inflation rate. CSR hours are not expended for new project proposal development as indicated below. The Contractor agrees to provide the following number of CSRs hours to the State:

Between May 1, 2014 and December 31, 2014 the Contractor shall allow the State up to 1,017 CSR Hrs.

Between January 1, 2015 and December 31, 2015 the Contractor shall allow the State up to 1,017 CSR Hrs.

Between January 1, 2016 and December 31, 2016 the Contractor shall allow the State up to 1,017 CSR Hrs.

Between January 1, 2017 and December 31, 2017 the Contractor shall allow the State up to 1,017 CSR Hrs.

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

- i. Project Contact
- ii. Type of Activity
- iii. Project Goal(s)
- iv. Brief Description of Project
- v. Project Deliverable(s)
- vi. Estimated Project Duration/Phasing
- vii. Description of Expected Timeline of Project

Upon the State's consideration of the proposal, the State shall then complete the Task Order Form (Attachment G). Both parties have the right to submit modifications or deny any Task Order submitted by the either party. The final Task Order document shall receive approval by the State, and be signed by the Contractor, the State Authorized Representative, and the DVHA Business Office prior to engagement in the outline work. Each Task Order must be approved before any work shall begin. The State will not pay for services that are not previously approved in a Task Order by both authorized representatives listed within this section. The State Authorized Representative and the DVHA Business Office have final authority over whether or not a Task Order is initiated under this contract. Changes to a Task Order shall be accomplished by written modification as agreed to by both parties listed below and will be reflected in a new Task Order. Task Orders must be approved by both parties listed below:

Karen Wingate, Procurement Director  
Department of Vermont Health Access  
312 Hurricane Lane  
Williston, VT 054945  
[karen.wingate@state.vt.us](mailto:karen.wingate@state.vt.us)

STATE OF VERMONT  
 AMENDMENT TO PERSONAL SERVICES CONTRACT  
 GOULD HEALTH SYSTEMS, INC.

PAGE 6 OF 26  
 CONTRACT# 26324  
 AMENDMENT #1

Nancy Hogue, VT Pharmacy Director  
 Department of Vermont Health Access  
 312 Hurricane Lane  
 Williston, VT 054945  
[nancy.hogue@state.vt.us](mailto:nancy.hogue@state.vt.us)

At the conclusion of a project assignment, the final deliverables/products prepared in accordance with what was agreed upon in the executed Task Order document will be submitted to the State. Acceptance of the deliverables/products by the State shall represent the Contractor's fulfillment of the project assignment. The State will have sixty days to acknowledge the final deliverables/products or to reject them.

Any unused CSR hours may be carried over to the following year. State will have the option to purchase additional CSR allocations annually in minimum block of 500 per year at a rate of \$98.25/hour through December 31, 2017. Any purchase of additional block of hours will be reduced to writing and incorporated into a signed amendment to this contract.

- a. For the DDI phase \$1,918,775.75 and a contingency amount of \$110,047.50 as shown in Table B-3.

Table B-3 DDI Milestones

PROJECT MILESTONES	PHASE	% DUE AT COMPLETION	EST. COMPLETION DATE	DOLLAR VALUE OF MILESTONE PAYMENT
<b>Project Initiation Activities</b> Deliverable 1 — Project Kick-off Presentation Deliverable 2 — Project Management Plan Deliverable 3 — Project Work Plan and Schedule Deliverable 4 — Weekly Project Status Reports Established	Combined	5%	11/15/2014	\$95,938.79
<b>Requirements Analysis</b> JAD Sessions Complete Deliverable 5 — Requirements methodology and Template Deliverable 6 — Cross-Walk of contract Requirements against Contractor's proposed PBMS Deliverable 7 — Detailed Functional and Non-Functional Requirements Traceability Matrices	Combined	15%	12/15/2014	\$287,816.36
<b>Business and Technical Design</b> Deliverable 8 — Configuration Design Document Deliverable 9 — Data Integration and Interface Design Document	Combined	10%	5/15/2015	\$191,877.57

<b>Conversion Activities</b> Deliverable 10 – Demonstration of successful initial data conversion <sup>1</sup>	Combined	10%	4/30/2015	\$191,877.57
<b>Configuration and Development</b> Deliverable 11 — Client Review of Configuration	Phase 1	10%	3/31/2015	\$191,877.57
Deliverable 12 — Unit Testing Results	Phase 2	5%	5/15/2015	\$95,938.79
<b>System Testing</b> Deliverable 13 — Documented System Test Results	Phase 1 Phase 2	5% 5%	3/31/2014 4/30/2015	\$95,938.79 \$95,938.79
<b>Acceptance Testing</b> Deliverable 14 — User Acceptance	Phase 1 Phase 2	5% 5%	3/31/2015 5/15/2015	\$95,938.79 \$95,938.79
<b>Training</b> Deliverable 15 — Training Plan Deliverable 16 — Training Materials	Phase 1	3%	3/31/2015	\$57,563.27
Deliverable 17 — Documented Evidence of Successful End-User Learning	Phase 2	2%	4/30/2015	\$38,375.51
<b>POS Implementation</b> Deliverable 18 — Deployment Plan Deliverable 19 — CMS Certification Plan Deliverable 20 — System Documentation Deliverable 21 — Performance SLAs Reporting Tools and pre go live results Deliverable 22 – Final Data Conversion Deliverable 23 — Rollout (Go Live)	Combined	10%	4/30/2015	\$191,877.57
<b>Production Support (Transition to Operations)</b> Deliverable 24 - Post go live support plan Deliverable 25 - Systems Acceptance (punch list completion) Deliverable 27 - Operations and Maintenance Procedure Manuals	Combined	5%	5/15/2015	\$95,938.79
<b>Certification of POS</b> Deliverable 26 - CMS Certification – (letter from CMS)	Combined	5%	7/31/2015	\$95,938.80
<b>SUBTOTAL</b>		<b>100%</b>		<b>\$1,918,775.75</b>
	Contingency for System Implementation and Enhancement		\$ 108.25/hr.	\$110,047.50
Total for DDI				<b>\$2,028,823.25</b>

<sup>1</sup> Completion date assumes receipt of initial data transfer from outgoing PBM Vendor no later than 06/01/2014

STATE OF VERMONT  
 AMENDMENT TO PERSONAL SERVICES CONTRACT  
 GOULD HEALTH SYSTEMS, INC.

PAGE 8 OF 26  
 CONTRACT# 26324  
 AMENDMENT #1

b. For Operations and Maintenance years \$10,547,615.14 and a contingency amount of \$350,350.16 as shown in Table B-4.

Table B-4 PBM Operations

Description	Unit of Measure	Year 1 Unit Cost	Year 1 Cost	Year 2 Cost	Year 3 Cost	Total Ongoing Costs
<b>Claims Processing and Operational Support</b>			<b>\$1,243,053.84</b>	<b>\$1,289,683.30</b>	<b>\$1,252,778.58</b>	<b>\$3,785,515.72</b>
POS Claims Processing (includes eligibility, adjudication, pricing, FUL, SMAC, 340B, COB, benefit design, Pro-DUR, all other edits, audits, restrictions)*	per month	\$57,444.16	\$689,329.92	\$715,973.94	\$689,169.76	\$2,094,473.62
Provider Support: Provider Portals, Provider Support, Call Center(s)-Technical and Clinical, Provider Communications	per month	\$32,493.66	\$389,923.92	\$404,995.36	\$389,833.40	\$1,184,752.68
Electronic Prescribing Support and Interface	per transaction	\$0.11	\$163,800.00	\$168,714.00	\$173,775.42	\$506,289.42
<b>Clinical Program Management and Support</b>			<b>\$1,103,679.76</b>	<b>\$1,146,248.42</b>	<b>\$1,104,065.24</b>	<b>\$3,353,993.42</b>
Prior Authorization - Electronic POS (Drug and Medical Look-Back)	per claim	\$0.79	\$206,798.96	\$214,792.18	\$206,750.93	\$628,342.07
Prior Authorization - Manual/Call Center	per claim	\$12.28	\$357,198.20	\$371,004.68	\$357,115.24	\$1,085,318.12
Prior Authorization-Electronic Medical Record/Electronic Health Record	per transaction	\$0.11	\$10,500.00	\$10,815.00	\$11,139.45	\$32,454.45
State Maximum Allowable Cost Program(SMAC)	per month	\$6,962.93	\$83,555.16	\$86,784.72	\$83,535.73	\$253,875.61
All other Clinical Programs and Services: PDL Management, Utilization Management, Retrospective Drug Utilization Review, DUR Board Support, Appeals Support, Specialty Pharmacy programs, Consultative Support	per month	\$37,135.62	\$445,627.44	\$462,851.84	\$445,523.89	\$1,354,003.17
<b>Financial Support Services</b>			<b>\$689,329.80</b>	<b>\$715,973.94</b>	<b>\$689,169.76</b>	<b>\$2,094,473.50</b>
Management of State and Federal rebate programs	per month	\$51,061.47	\$612,737.64	\$636,421.28	\$612,595.35	\$1,861,754.27
Administration and support of Supplemental rebate program	per month	\$3,481.46	\$41,777.52	\$43,392.36	\$41,767.86	\$126,937.74
Analytics and reporting	per month	\$2,901.22	\$34,814.64	\$36,160.30	\$34,806.55	\$105,781.49
<b>Other Services</b>			<b>\$425,000</b>	<b>\$437,750</b>	<b>\$450,882.50</b>	<b>\$1,313,632.50</b>
Medication Therapy Management Program-Medicaid	Per Member Per Month	\$125.00	\$425,000.00	\$437,750.00	\$450,882.50	\$1,313,632.50
<b>Total Ongoing Services and Options</b>			<b>\$3,461,063.40</b>	<b>\$3,589,655.66</b>	<b>\$3,496,896.08</b>	<b>\$10,547,615.14</b>
<b>Contingency (Budget for Unanticipated Tasks)</b>			<b>\$113,348.90</b>	<b>\$116,749.39</b>	<b>\$120,251.87</b>	<b>\$350,350.16</b>
<b>Total O&amp;M</b>			<b>\$3,574,412.30</b>	<b>\$3,706,405.05</b>	<b>\$3,617,147.95</b>	<b>\$10,897,965.30</b>

2. Invoices. Unless otherwise specifically provided in Attachment A, Contractor shall issue to the State, monthly in arrears, a separate invoice in U.S. Dollars for the amounts due for work provided in Attachment A provided in the previous month. Each invoice shall include such detail and categories of information as mutually agreed upon by the parties. Each invoice shall itemize the specific sections of the Statement of Work on which such Charge is based and include calculations used to establish such Charges. Invoices shall be coded and charges segregated as directed by the State to facilitate proper accounting among multiple funding sources and different cost allocations among different parts of the solution. All periodic Charges under this agreement (excluding charges based upon actual usage or consumption of Services) shall be computed on a calendar month basis and shall be prorated for any partial month. Invoices must be submitted to:

Karen Wingate, Procurement Director  
Department of Vermont Health Access  
312 Hurricane Lane, Suite 201  
Williston, VT 054953  
Karen.Wingate@state.vt.us

3. Payment.
  - a. Unless otherwise provided in Attachment A, the undisputed portion of each invoice properly rendered and delivered hereunder shall be due and payable within thirty (30) days following the date such invoice is actually received by the State. Any amounts disputed by the State shall be disputed in accordance with the provisions of Section 4 [Payment Disputes]. All payments shall be made to Contractor by the State in U.S. dollars, unless otherwise specifically agreed upon and set forth in the applicable amendment.
  - b. The Contractor will be compensated solely by the State. Accordingly, Contractor may not seek payment for Services provided to the State under this agreement from any other person or entity. No payments made under this agreement shall be construed as evidence of the adequate performance of the Services nor shall any payments be construed as acceptance of any unsatisfactory Services by the State.

4. Payment Disputes.

In order to dispute an invoice, or any part thereof, the State must set forth in writing the amount(s) disputed and the specific basis or reason for the dispute, which shall be reasonably detailed and not general or speculative in nature. The State shall forward a Payment Dispute Notice to Contractor on or prior to the due date of the invoice disputed. The State shall not dispute any invoice unless the State believes, in good faith, that the State is being charged for Services which have not been provided or at prices higher than those set forth in this agreement, or that manifest errors in calculation or the like have occurred, or that the State is otherwise being charged for items contrary to work described in the Attachment A of this contract.

Upon compliance with the foregoing provisions, the State may, at its option, withhold payment of the disputed amount(s) of the invoice, and shall remit to Contractor the undisputed amount(s), if any, in a timely manner. Upon receipt of the Payment Dispute Notice, both parties shall make reasonable, diligent, good faith efforts to resolve the dispute as soon as possible in accordance with the dispute resolution procedures set forth below:

- a. General. Unless specifically provided otherwise in this agreement, any dispute or

controversy between the parties hereunder shall be resolved as provided in this Section. A dispute over payment will not entitle Contractor to withhold, suspend or decrease its required performance under this Agreement. Contractor shall continue performing its obligations hereunder while the parties are seeking to resolve any dispute in accordance with this Article, unless and until such obligations are terminated or expire in accordance with the provisions of this agreement and the existence of such dispute shall not relieve the Contractor of any of its obligations under this agreement.

- b. Informal Dispute Resolution. The parties may attempt to resolve any dispute or controversy hereunder, informally by submitting the dispute, in writing, managers responsible for the State and the Contractor ("Project Managers") who shall meet in person or by telephone conference call in an effort to resolve the dispute, as often as they deem necessary to gather and analyze any information relevant to the resolution of the dispute, but not less than once every day.
  - i. During the course of attempting to resolve the dispute informally, all reasonable requests for non-privileged information related to the dispute, made by one party to the other, shall be honored; provided, however, in attempting to resolve the dispute, the conduct and activities of the parties, any offers of compromise, all settlement proposals and/or information exchanged shall: (i) be considered information that is confidential and proprietary to each of the parties and therefore, prohibited from disclosure by either of them; (ii) be considered settlement discussions, and shall be inadmissible in any subsequent proceedings; and (iii) shall in no way be construed or deemed to preclude, prohibit or restrict either party, at any time or in any manner, from proceeding to litigation or otherwise exercising any right or remedy available to it under this agreement, at law or in equity.
  - ii. If the Project Managers determine in good faith that resolution through continued discussions does not appear likely or if the dispute is not resolved within five (5) business days after the dispute has been submitted in writing, either party may notify the other ("Dispute Notice") to proceed with the following escalation and dispute resolution procedures:
    - 1) The Project Managers shall gather any additional information relevant to the resolution of the dispute and which may be necessary and appropriate for presentation to the Contractor Account Manager and an executive designated by the State responsible for the Services involved in such dispute.
    - 2) The Project Managers shall, within fifteen (15) business days after the Dispute Notice has been given, submit a report to the Contractor Account Director and Executive designated by the State which includes a description of the nature, extent and basis of the dispute, how the dispute arose, the U.S. dollar amount involved in the dispute, any agreed upon statements of fact, a fair, accurate and complete representation of the positions of each of the parties in the dispute, and any other information relevant to the dispute, including information that represents agreed upon stipulations and statements of fact, as well as points of disagreement between the parties. The Report shall include one or more recommendations and alternatives which the parties believe the Contractor Account Manager and designated State Executive should consider. A description of the projected impact of the failure to resolve the dispute promptly and amicably shall also be included in the submission. Each party may include separate statements of impact, recommendations or other information to the

- extent any of the participants cannot or do not agree on particular items.
- 3) Not later than ten (10) days after the Report in connection with any dispute is submitted to them for review, the Contractor Account Manager and designated State Executive shall meet in an attempt to resolve the dispute. Either party may request additional information, material, advice and input from individuals and organizations inside or outside the State's and Contractor's organization.
  - 4) If the Contractor Account Manager and designated State Executive are unable to resolve the dispute within five (5) business days after the aforesaid meeting date, the parties may mutually agree to refer the dispute to non-binding mediation, which shall be conducted using the rules and procedures promulgated by the American Arbitration Association, applicable to mediation in a location to be agreed upon in Vermont, where the parties agree all such proceedings shall be conducted. Such mediation shall be conducted by a qualified neutral, independent third party mediator, knowledgeable in the subject matter of the dispute and, if the parties cannot agree upon a mediator, each party shall select such a mediator and the two (2) mediators so selected shall mutually agree upon a third and the mediation shall, in that case, be conducted by a panel of the three (3) mediators so selected. Each party shall bear its own expenses and an equal share of the expenses of the mediator(s) and the any related fees.
  - 5) If the parties accept and agree to the mediators' recommendations or otherwise reach agreement resolving the dispute, such agreement shall be made in writing and once duly executed, shall be binding on the parties; provided, however, that for the avoidance of any doubt or ambiguity, nothing in this agreement shall be construed as restricting, prohibiting, preventing or otherwise impairing either party from proceeding to litigation, instituting judicial or other proceedings, including a formal claim or legal action, or from pursuing any and all other legal, equitable or contractual remedies available to such party, at any time. Notwithstanding anything in this agreement to the contrary, the State shall not agree to arbitration and the State shall not waive any right to a trial by jury.

**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS**

1. **Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

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

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

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

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

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

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

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

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

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

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

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

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

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of **\$1,000,000** per occurrence, and **\$3,000 000** aggregate.

- 8. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
- 9. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200,

Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- 10. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
- 11. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.
- 12. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
- 13. Taxes Due to the State:**
- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
  - b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
  - c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
  - d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.
- 14. Child Support:** (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:
- a. is not under any obligation to pay child support; or
  - b. is under such an obligation and is in good standing with respect to that obligation; or
  - c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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

- 15. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.
- 16. No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
- 17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
- 18. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.  
  
Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>
- 19. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- 20. Internal Controls:** In the case that this Agreement is an award that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- 21. Mandatory Disclosures:** In the case that this Agreement is an award funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.
- 22. Conflict of Interest:** Party must disclose in writing any potential conflict of interest in accordance with Uniform Guidance §200.112, Bulletin 5 Section IX and Bulletin 3.5 Section IV.B.

(End of Standard Provisions)

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

**1. The requirements contained in Attachment C, Section 15 are hereby modified by adding the following language at the end of paragraph 15:**

**15. Sub-Agreements:** *“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 sales of or reorganization of the Party.”*

**2. Reasons for Modifications:**

The original base contract included this language but the revised Attachment C dated 3-1-2015 has since removed this language. The AAG and the contract have agreed to re-insert this language into the contract.

- 1) Order of Precedence; Contractor Documentation. The parties specifically agree that any language or provisions contained in a Contractor Document is of no force and effect if such language or provisions conflict with the terms of Attachment C or Attachment D to this Contract. Further, in no event shall any Contractor Document (a) require indemnification by the State of the Contractor; (b) waive the State’s right to a jury trial; (c) establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Civil Division, Washington Unit; (d) constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State’s sovereign status or under the Eleventh Amendment to the United States Constitution; or (e) limit the time within which an action may be brought hereunder.

For purposes of this Attachment D, “Contractor Document” shall mean one or more document, agreement or other instrument required by the Contractor in connection with the performance of the services set forth in Attachment A hereto regardless of format and any other paper or “shrinkwrap,” “clickwrap” or other electronic version thereof.

- 2) Term of Contractor’s Documents. Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract.
- 3) Indemnification. The Contractor acknowledges and agrees that the laws and the public policy of the State of Vermont prohibit the State from agreeing to indemnify contractors and other parties. The Contractor agrees that, to the extent a Contractor Document expressly provides for or implies indemnification of the Contractor and/or other third parties by the State, such sections shall be waived and have no force and effect with respect to the State.

- 4) Limitation on Disclaimer. Notwithstanding anything to the contrary set forth in a Contractor Document, the express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.

- 5) Limits to Liability.

(i) CONTRACTOR'S AGGREGATE LIABILITY TO THE STATE OF VERMONT IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER CONTRACT, TORT OR ANY OTHER THEORY OF LAW OR EQUITY) SHALL NOT EXCEED, UNDER ANY CIRCUMSTANCES, TWO AND A HALF (2.5) TIMES THE FEES PAID OR PAYABLE BY THE STATE OF VERMONT TO CONTRACTOR DURING THE FIRST YEAR OF OPERATIONS (DEFINED HERE AS THE FIRST YEAR THE CONTRACTOR PAYS CLAIMS OR 2015). THE FOREGOING LIMITATION SHALL NOT APPLY TO STATE CLAIMS ARISING DIRECTLY OUT OF (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE FOR COPYRIGHT, PATENT OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT; (B) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; OR (C) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT. THE FOREGOING LIMITATION SHALL APPLY TO STATE CLAIMS ARISING DIRECTLY OUT OF CONTRACTORS CONFIDENTIALTY OBLIGATIONS TO THE STATE.

THE CONTRACTOR SHALL NOT BE LIABLE TO THE STATE FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY OR LOSS OF ANTICIPATED BUSINESS OR PROFITS IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

(ii) The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement. The provisions of this Section shall survive the expiration or termination of this Contract.

- 6) Records Available for Audit: The Contractor shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Contractor in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
- 7) Trial by Jury. The Contractor acknowledges and agrees that public policy prohibits the State from agreeing to arbitration and/or from waiving any right to a trial by jury. Therefore, Contractor further acknowledges and agrees that, to the extent a Contractor Document expressly provides for arbitration or waiver of the State's right to a jury trial of the Contractor and/or other third parties by the State, such sections shall be waived and shall have no force and effect with respect to the State.

- 8) Sovereign Immunity. The Contractor acknowledges that State reserves all immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this contract.
- 9) Jurisdiction. Notwithstanding anything to the contrary in the Contractor's Documents, the Contractor agrees that any action or proceeding brought by either the State or the Contractor in connection with this Contract shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Contractor irrevocably submits to the jurisdiction of such court in respect of any such action or proceeding. The State shall not be liable for attorneys' fees in any proceeding.
- 10) Governing Law. Notwithstanding anything to the contrary in a Contractor Document, the Contractor agrees that this Contract, including any Contractor Document, shall be governed by and construed in accordance with the laws of the State of Vermont.
- 11) Warranties. The Contractor represents, warrants and covenants that:
  - (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the execution, delivery and performance of this Agreement by the Contractor has been duly authorized by the Contractor.
  - (ii) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Agreement.
  - (iii) The Contractor shall comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Agreement.
  - (iv) All deliverables shall be free from material errors and shall perform in accordance with the specifications therefor.
  - (v) The Contractor owns or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the deliverables as set forth in this Agreement and none of the deliverables or other materials or technology provided by the Contractor to the State shall infringe upon or misappropriate the intellectual property rights of any third party.
  - (vi) Each and all of the services shall be performed in a timely, diligent, professional and workpersonlike manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment. At its own expense and without limiting any other rights or remedies of the State hereunder, the Contractor shall re-perform any services that the State has determined to be unsatisfactory in its reasonable discretion, or the Contractor shall refund that portion of the fees attributable to each such deficiency.
  - (vii) The Contractor has adequate resources to fulfill its obligations under this Agreement.
- 12) Virus Protection. Contractor warrants and represents that any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered shall have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or

unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State.

Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

- 13) Effect of Breach of Warranty. If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall provide at no additional cost of any kind to the State, the maintenance required.
- 14) Trade Secret, Patent, and Copyright Infringement. Notwithstanding anything to the contrary in the Contractor's Documents regarding intellectual property and infringement claims, the State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.
- 15) Taxes: Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate shall be furnished upon request covering taxable items. The Contractor agrees to pay all Vermont taxes which may be due as a result of this Contract.
- 16) Limits on Actions Prohibited. The Contractor acknowledges and agrees that 12 V.S.A. § 465 renders any contractual provision which limits the time in which an action may be brought under the contract, or waives the statute of limitations, null and void.
- 17) Contract Default; Remedies. Notwithstanding anything to the Contrary in the Contractor Documents hereto, if either party breaches a material provision of this Contract, which breach remains uncured for a period of thirty (30) days after written notice thereof from the other party specifying the breach (or if such breach cannot be completely cured within the thirty (30) day period, such longer period of time provided that the breaching party proceeds with reasonable diligence, as determined by the State, to completely cure the breach) either party, at its option, may terminate this Contract immediately by giving written notice and exercise such other remedies as shall be available under this Contract, at law and/or equity.  
  
No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.
- 18) State Facilities. During the term of this Contract, the State shall make available to Contractor space in any State facility applicable to the Services, subject to the conditions that Contractor: (i) shall only use such space solely and exclusively for and in support of the Services; (ii) shall not use State facilities to provide goods or services to or for the benefit of any third party; (iii) shall comply with the leases, security, use and rules and agreements applicable to the State facilities; (iv) shall not use State facilities for any unlawful purpose; (v) shall comply with all policies and procedures governing access to and use of State

facilities that are provided to Contractor in writing; (vi) instruct Contractor personnel not to photograph or record, duplicate, disclose, transmit or communicate any State information, materials, data or other items, tangible or intangible, obtained or available as a result of permitted use of State facilities; and (vii) return such space to the State in the same condition it was in at the commencement of this Contract, ordinary wear and tear excepted. State facilities shall be made available to Contractor on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

- 19) Force Majeure. The parties' performance under this Contract is subject to acts of God, war or civil commotion, fire, earthquake, or other natural disaster, and unforeseeable acts of any federal, state, or local government or agency thereof, or any other cause beyond the parties' control, making it illegal or impossible to perform their obligations under this Contract. If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that it took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described in this Paragraph.
- 20) Marketing. Neither party to this Contract shall refer to the other party in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of such party prior to release.
- 21) Attachment F, Section 10, is hereby deleted entirely and replaced with the following language:

**Intellectual Property/Work Product Ownership.**

(i) The State shall retain all right, title and interest in and to all data content provided by the State, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are solely and exclusively developed for the State and used by Contractor hereunder ("**State Information**"), and all other rights, tangible or intangible (collectively, "**State Intellectual Property**"). Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein. Without any additional cost to the

State, Contractor shall promptly give the State all reasonable assistance and execute all documents the State may reasonably request to assist and enable the State to perfect, preserve, enforce, register and record its rights in and to all Work Product. Contractor hereby appoints the State, through its designated signatory, as Contractor's agent and Attorney-in-Fact to execute, deliver and file, as and if necessary, any and all documents necessary to give effect to the provisions of this Section and to take all actions necessary therefore, in Contractor's stead and name, with the same force and effect as if executed, delivered and/or filed by Contractor. Notwithstanding the foregoing, or any other provision of this Agreement, the State of Vermont and Contractor acknowledge and agree that any software and services that are accessed through Contractor's hosted environment in connection with this Agreement shall be regarded as Software-As-A-Service, and shall not be subject to the foregoing assignment of ownership rights to the State of Vermont.

**"Work Product"** means any tangible or intangible work product, creation, material, item or deliverable, documentation, information and/or other items created by Contractor, either solely or jointly with others, and which are developed, conceived of, prepared, procured, generated or produced by Contractor solely and exclusively for the State. Work Product may include ideas, inventions, improvements, discoveries, methodologies or processes, or writings, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, specifications, operating instructions, procedures manuals, or other documentation, whether or not protectable under Title 17 of the U.S. Code and whether or not patentable or otherwise protectable under Title 35 of the U.S. Code, that are developed, conceived of, prepared, arise, procured, generated or produced in connection with this Contract solely and exclusively for the State, whether as individual items or a combination of components and whether or not the services or the deliverables are completed or the same are reduced to practice during the Contract term. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted a license to any such Contractor Intellectual Property that is incorporated into Work Product during the term of this Agreement. Notwithstanding the foregoing, or any other provision of this Agreement, the State of Vermont and Contractor acknowledge and agree that any software and services that are accessed through Contractor's hosted environment in connection with this Agreement shall be regarded as Software-As-A-Service, and shall not be subject to the foregoing assignment of ownership rights to the State of Vermont.

(ii) Upon full payment to Contractor hereunder, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to the Deliverables, except to the extent they include any Contractor Technology; and (ii) grants to State the right to use, for State's internal business purposes, any Contractor Technology included in the Deliverables in connection with its use of the Deliverables. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Technology.

For purposes of these terms (i) "Technology" means works of authorship, materials, information and other intellectual property; (ii) "Contractor Technology" means all Technology created prior to or independently of the performance of the Services, or created by Contractor or its subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon; and (iii)

“Deliverables” means all Technology that Contractor or its subcontractors create for delivery to State as a result of the Services.

The Contractor shall not sell or copyright a work product or item produced solely and exclusively for the State under this Contract 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 Technology. Notwithstanding the foregoing, or any other provision of this Agreement, the State of Vermont and Contractor acknowledge and agree that any software and services that are accessed through Contractor’s hosted environment in connection with this Agreement shall be regarded as Software-As-A-Service, and shall not be subject to the foregoing assignment of ownership rights to the State of Vermont.

- 22) Confidentiality of Contractor Information. Notwithstanding anything to the contrary in a Contractor Document, the State shall not disclose information for which a reasonable claim of exemption can be made pursuant to 1 VSA § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall promptly and without unreasonable delay notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State’s receipt of any such request. Contractor agrees that it shall not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including attorneys’ fees awarded in accordance with 1 V.S.A. § 320, or otherwise incurred by the State, in connection with any action brought by Contractor or a third party in connection with Contractor’s attempts to prevent public disclosure of Contractor’s information.

- 23) Confidentiality of State Information. In performance of this Contract, and any exhibit or schedule hereunder, the Party acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law. In addition to the provisions of this Section, the Party shall execute the HIPAA Business Associate Agreement attached as Attachment E. Before receiving or controlling State Data, the Party shall have an information security policy that protects its systems and processes and media that may contain State Data from internal and

external security threats and State Data from unauthorized disclosure, and a copy of such policy has been provided to the State. No State Data shall be stored, accessed from, or transferred to any location outside the United States.

Contractor agrees to keep confidential all information received and collected by Contractor in connection with this contract, including, but not limited to Medicaid eligibility data, rebate information, supplemental rebate information, provider enrollment and claims data, 340B program pricing, protected health information including; but not limited to, (1) diagnosis codes, (2) disease information, (3) progress notes, (4) authorization requests, (5) responses to authorization requests, all historical data of the previous contractor, DUR Board information including prospective and retrospective analysis, presentations, and recommendations made to the DUR and decisions by the DUR, minutes, and all internal correspondence between Contractor and DVHA and DUR ("State Data") unless otherwise instructed by the State. The Contractor agrees not to publish, reproduce, or otherwise divulge any such State Data in whole or in part, in any manner or form or authorize or permit others to do so. Contractor shall take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to those employees on his/her staff who must have the information on a "need to know" basis. The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order. The Contractor represents and warrants that it has implemented and it shall maintain during the Term of this Agreement the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures include at a minimum, as applicable: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

- 24) Security Breach Reporting. The Contractor acknowledges that in the performance of its obligations under this Agreement, it shall be a "data collector" pursuant to Chapter 62 of Title 9 of the Vermont Statutes (9 V.S.A. §2430(3)). In addition to the requirements set forth in the Business Associate Agreement, in the event of any actual or suspected security breach the Contractor either suffers or learns of that either compromises or could

compromise State Data in any format or media, whether encrypted or unencrypted (including PII, PHI or ePHI)(for example, but not limited to, physical trespass on a secure facility, intrusion or hacking or other brute force attack on any State environment, loss/theft of a PC or other portable device (laptop, desktop, tablet, smartphone, removable data storage device), loss/theft of printed materials, failure of security policies, etc.) (collectively, a "Security Breach"), and in accordance with 9 V.S.A. §2435(b)(2), the Contractor shall promptly and without unreasonable delay notify appropriate State personnel of such Security Breach.

The Contractor's report shall identify: (i) the nature of the Security Breach, (ii) the State Data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State.

The Contractor agrees to comply with all applicable laws that require notification in the event of unauthorized release of personally-identifiable information as they may be amended from time to time, including, but not limited to Chapter 62 of Title 9 of the Vermont Statutes, HIPAA and/or HITECH, or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), the Contractor agrees to assume full responsibility for such notification, and to pay or be liable for the direct reasonable expenses and costs directly arising therefrom (unless the State agrees to assume any such liability) that are, in the State's reasonable determination, required by law; computer forensics and like costs related thereto, including reasonable investigation costs resulting therefrom; and credit monitoring services to affected individuals for a period of time not to exceed one (1) year from the date of the breach in an amount consistent with reasonable market costs for such services.

In addition to any other indemnification obligations in this agreement, the Contractor shall fully indemnify and save harmless the State from any direct costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure by the Contractor, its officers, agents, employees, and subcontractors of such State Data.

- 25) Continuity of Performance. In the event of a dispute between the Contractor and the State, each party shall continue to perform its obligations under this Agreement during the resolution of such dispute unless and until this Agreement is terminated in accordance with its terms.
- 26) Audit Requirements. The Contractor shall cause an SSAE 16 Type II audit certification to be conducted annually. The audit results and the Contractor's plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor's receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Contractor's fiscal year, the Contractor shall transmit its annual audited financial statements to the State.

- 27) Access to State Data: Within ten (10) business days of a request by State and within sixty (60) days after the effective date of termination of this contract, the Contractor shall make available to State a complete and secure (i.e. encrypted and appropriately authenticated) download file of State Data in a format acceptable to State including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. *Provided, however*, in the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall make commercially reasonable efforts to return all State Data to State control, or, if such return is infeasible, destroy and certify destruction of such State Data; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Data.
- 28) Ownership of State Data; User Name Contractor acknowledges and agrees that all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract shall be the property of State. All content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, to Contractor to facilitate Contractor's performance under the Contract ("State Materials") shall be and remain the sole property of the State and that the Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Materials for its own purposes. In no event shall the Contractor claim any security interest in the State Materials.
- 29) Access to State Materials. Within ten (10) business days of a request by State and within sixty (60) days after the effective date of termination of this contract, Contractor shall make available to State a complete and secure (i.e. encrypted and appropriately authenticated) download file of State Materials in a format acceptable to State including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. *Provided, however*, in the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Materials to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Materials.
- The Contractor's policies regarding the retrieval of data upon the termination of services have been made available to the State upon execution of this Contract under separate cover. The Contractor shall make commercially reasonable efforts to provide the State with not more than thirty (30) days written notice following any material amendment or modification of such policies. The parties agree that upon termination of this Contract, the Contractor shall, at the choice of the State, either return all the State Materials transferred and the copies thereof to the State or shall destroy all the State Materials and certify to the State that it has done so.
- 30) Back-Up Policies: The Contractor's back-up policies have been made available to the State upon execution of this Contract under separate cover. The Contractor shall make

commercially reasonable efforts to provide the State with not more than thirty (30) days written notice following any material amendment or modification of such policies.

- 31) Data Format; Encryption. The Contractor agrees to maintain State Data at rest in SQL Server data files using encryption. Further the Contractor agrees to utilize Transparent Data Encryption with a minimum of AES 128 bit encryption strength. The Contractor agrees to maintain State Data in motion using Secure File Transfer Protocols (sFTP). Further the Contractor agrees to utilize DSA or RSA standards with a minimum of 1024 bit encryption. GHS will ensure that any storage and encryption methods comply with all applicable state and federal standards.
- 32) Contractor Bankruptcy. Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Materials.

Approval:

Assistant Attorney General: E-SIGNED by Jared Bianchi  
on 2015-07-14 16:21:05 GMT

Date: July 14, 2015