

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Grant Thornton LLP, with a principal place of business in Alexandria, Virginia (hereafter called "Contractor"). The Contractor's form of business organization is a Limited Liability Partnership. The Contractor's local address is 333 John Carlyle Street, Suite 500, Alexandria VA 22314-5745. 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 to perform an independent audit of the State's compliance with CMS final rule 9957-F and program integrity rule part II45 CFR 155.1200(C). 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 ***\$140,700.00***
4. **Contract Term.** The period of Contractor's performance shall begin on March 12, 2015 and end on April 20, 2015.
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 not required.

6. **Prior Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 30 days in advance. Notwithstanding this provision, if a governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this contract are provided, is not in compliance with State and Federal law or is operating with deficiencies the State may terminate this contract immediately and notify the Contractor accordingly. Also, in the event that federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract with no obligation to pay the Contractor from State revenues.

8. **Contact Persons For This Award:**

The contacts for this award are as follows:

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>	<u>For the Contractor</u>
Name:	Emily Trantum	Anne Petrow	Jack Reagan Partner
Phone #:	802-879-5946	802-585-0276	703-637-2730
E-mail:	emily.trantum@state.vt.us	anne.petrow@state.vt.us	jack.reagan@us.gt.com

9. **Attachments.** This contract consists of 28 pages including the following attachments, which are incorporated herein:

Attachment A - Specifications of Work to be Performed

Attachment B - Payment Provisions

Attachment C - Customary State Contract provisions

Attachment D - Modifications of Insurance Attachment E - Business Partner Agreement

Attachment F - Customary Contract Provisions of the Agency of Human Services

The order of precedence of documents shall be as follows:

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

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

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

ROBERT SKOWRONSKI, DEPUTY COMMISSIONER DATE
312 Hurricane Lane, Suite 201
Williston, VT 05495-2087
Phone: 802-324-5604
Email: Robert.Skowronski@state.vt.us

JACK REAGAN, PARTNER DATE
333 John Carlyle Street, Suite 500
Alexandria VA 22314-5745
Phone: 703-837-4400
Email: Jack.Reagan@us.gt.com

ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

Contractor will provide an independent examination of the State of Vermont's compliance with the federal government regulations for state health insurance exchanges (known as State-Based Exchanges or SBEs) and Qualified Health Plan (QHP) issuers for services rendered in the initial reporting period. Contractor's examination and the related reports must meet the requirements of the CMS final rule (9957-F) issued August 30, 2013, effective October 1, 2013 and 45 C.F.R. § 155.1200, Exchange Establishment Standards and Other Related Standards under the Affordable Care Act.

Contractor's examination of Vermont Health Connect will be accompanied by a report, to be issued by Contractor, in writing, that details the methodology and outcome of the examination. The examination and accompanying report will comply with all regulatory requirements regardless of whether those requirements are directly referenced within this agreement. The agreement and accompanying report are referred to herein, jointly and severally, as the Examination. No Examination shall be considered complete without at least the following areas of Oversight and Financial Integrity:

Financial Reporting – An opinion or disclaimer as to accuracy for accounting of receipts and expenditures in accordance with Generally Accepted Accounting Principles (GAAP)

Control Framework – Assessment of design and implementation of processes for all activities for effectiveness, efficiency, integrity, transparency, and accountability.

Monitoring – Assessment of financial and programmatic monitoring activities to include the Advanced Premium Tax Credit (APTC), and Privacy and Security Information Technology requirement safeguards.

Reporting – Assessment of reporting activities for APTRC/CSR (Cost Sharing Reductions) calculations, eligibilities and enrollment data, enrollee satisfaction, and results of financial and programmatic audits.

Performance Information – Assessment of the selection of Quality Rating System (QRS) health plan measures, the organization of these measures, the organization of measures, and strategy for collecting, calculating and submitting QRS data.

The Examination shall include and analysis of Specific Exchange Compliance Focus Areas. The Specific Areas to be assessed will include:

- Compliance with 45 CFR Part 155.
- Processes and procedures designed to prevent improper eligibility determinations and enrollment transactions.
- Identification of errors that resulted in incorrect eligibility determinations.
- Accuracy of accounting of receipts and expenditures in accordance with GAAP
- Processes and procedures designed to prevent improper eligibility determinations and enrollment transactions
- Processes and procedures designed to prevent improper eligibility determinations and enrollment transactions
- Identification of errors that resulted in incorrect eligibility determinations

- Financial statements and supporting documentation, including a sampling of receipts and expenditures to ensure accuracy.
- Internal controls and related financial and accounting policies and procedures
- Policies and procedures related to fraud, waste, and abuse (FWA).
- Policies and procedures related to segregation of duties.
- Contracts, including applicable invoices, proposals, and payment records
- Identification of errors that resulted in incorrect eligibility determinations including:
 - Eligibility policies and procedures
 - Results of internal auditing and monitoring of the eligibility process
 - Error logs and corrective actions
 - All audit/review reports
 - Tracking of report issues and resolution timeline
 - Processes and procedures for privacy and security of navigators
 - Processes and procedures for addressing complaints
 - Processes and procedures for providing assistance in culturally and linguistic appropriate manner
 - Training standards
 - Breaches of Security or Privacy by a navigator grantee
 - Standards designed to prevent and mitigate any conflicts of interest, financial or otherwise
 - Confirmation that assures funding for navigator grants does not come from federal funds
 - Privacy and Security Safeguards
 - Call center information provided to applicants in plain language and in a manner that is accessible to individuals with disabilities and individuals with limited English proficiency
 - Eligibility Determinations for Exchange Participation and Insurance Affordability Programs
 - Standard operating procedures (SOPs) and processes for making accurate eligibility determinations in compliance with Federal regulations (including resolution of inconsistencies).
 - Management review/internal controls associated with the prevention of improper eligibility determinations.
 - Management review/internal controls associated with the identification of incorrect eligibility determinations.
 - Management review/internal controls associated with compliance with the requirements regarding confidentiality, disclosure, maintenance, and use of information.
 - Current and fully executed agreements with other entities specifying their respective responsibilities in connection with eligibility determinations, including (if appropriate) those related to exemptions.
 - Data and records maintenance relating to eligibility verifications and determinations.
 - Enrollment in Qualified Health Plans
 - SOPs and processes for making accurate enrollments in compliance with Federal regulations.
 - Management review/internal controls associated with the prevention of improper enrollment transactions, including processes to ensure that enrollees are receiving accurate advance premium tax credits (APTCs), cost-sharing reductions (CSRs), and premiums (and for correction of any discrepancies).
 - Compliance with Centers for Medicaid & Medicare Services (CMS)-issued Standard

- Companion Guides (e.g., ASC X12 820 and 834).
- Processes to reconcile enrollment information with qualified health plan (QHP) issuers and CMS no less than on a monthly basis.
- Data and records maintenance relating to enrollments.
- Certification of Qualified Health Plans
- Process for recertification of QHPs
- Process for decertification of QHPs
- Policies and procedures for certification of health plans

Contractor agrees to inquire into and assess all relevant data sources, including, but not limited to, those included in CMS-9957-F and 45 CFR Part 155

Contractor’s Examination shall utilize at least the following primary data sources:

1. Quarterly and annual Outcomes Metrics Reports
2. Performance Monitoring data under 45 CFR Subpart M, 155.200(a)(3)
3. State-Blueprint Profiles through SERVIS
4. State of Vermont Comprehensive Annual Financial Reports (CAFR) FY 2014
5. State of Vermont A-133 Single Audit Report FY 2014

Expected work requirement (CMS Protocol)

The contractor warrants that Contractor has reviewed the requirements set forth in 45 CFD 155, Subparts C, D, E, and K and will assess the SBM’s compliance with each subpart. Requirements and documentation to review for each subpart are provided below:

PI Reg. Subpart	Elements to Review
<i>Subpart C—General Functions of the Exchange</i>	<ul style="list-style-type: none"> • Processes and procedures for privacy and security of navigators. • Processes and procedures for addressing complaints. • Processes and procedures for providing assistance in culturally and linguistic appropriate manner. • Training standards. • Breaches of Security or Privacy by a navigator grantee. • Standards designed to prevent and mitigate any conflicts of interest, financial or otherwise. • Confirmation that assures funding for navigator grants does not come from federal funds. • Privacy and Security Safeguards. • Call center information provided to applicants in plain language and in a manner that is accessible to individuals with disabilities and individuals with limited English proficiency.

<p><i>Subpart D—Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs</i></p>	<ul style="list-style-type: none"> • Standard operating procedures (SOPs) and processes for making accurate eligibility determinations in compliance with Federal regulations (including resolution of inconsistencies). • Management review/internal controls associated with the prevention of improper eligibility determinations. • Management review/internal controls associated with the identification of incorrect eligibility determinations. • Management review/internal controls associated with compliance with the requirements regarding confidentiality, disclosure, maintenance, and use of information. • Current and fully executed agreements with other entities specifying their respective responsibilities in connection with eligibility determinations, including (if appropriate) those related to exemptions. • Data and records maintenance relating to eligibility verifications and determinations.
<p><i>Subpart E—Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans</i></p>	<ul style="list-style-type: none"> • SOPs and processes for making accurate enrollments in compliance with Federal regulations. • Management review/internal controls associated with the prevention of improper enrollment transactions, including processes to ensure that enrollees are receiving accurate advance premium tax credits (APTCs), cost-sharing reductions (CSRs), and premiums (and for correction of any discrepancies). • Compliance with Centers for Medicaid & Medicare Services (CMS)-issued Standard Companion Guides (e.g., ASC X12 820 and 834). • Processes to reconcile enrollment information with qualified health plan (QHP) issuers and CMS no less than on a monthly basis. • Data and records maintenance relating to enrollments.
<p><i>Subpart K—Exchange Functions: Certification of Qualified Health Plans</i></p>	<ul style="list-style-type: none"> • Process for recertification of QHPs. • Process for decertification of QHPs. • Policies and procedures for certification of health plans.

Contractor explicitly warrants that the Examination completed under this agreement will meet or exceed Vermont’s examination and audit requirements under applicable law.

Audit Completion and Submission

The Audit must be completed by April 6, 2015. The audit report, whether mailed or hand delivered, must arrive at the Department of Vermont Health Access (DVHA) office no later than 4:00 p.m. April 20, 2015. The method of delivery shall be at the contractor’s discretion, and shall be at the sole risk of the contractor to assure delivery to the DVHA office. The State does not take responsibility for any problems in mail of delivery, either within or outside the state.

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

Emily Trantum
 Contracts and Grants Administrator

Department of Vermont Health Access (DVHA)
312 Hurricane Lane
Williston, VT 05495-2087
emily.trantum@state.vt.us
802-879-5946

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

ATTACHMENT B PAYMENT PROVISIONS

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

1. Upon receipt of the complete audit on April 20, 2015 by 4:00 p.m. and upon the State's review and approval the State shall pay the contractor an amount of \$140,700.
2. FORCE MAJEURE - Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under the contract which are reasonably related to the Force Majeure Event shall be suspended, and the affected party shall do everything reasonably necessary to resume performance as soon as possible. Labor disputes with the impacted party's own employees will not be considered a "force majeure event" and will not suspend performance requirements under the contract.
3. No benefits or insurance will be reimbursed by the State.
4. Invoices shall be rendered on official company letterhead and reference this contract number, include date of submission, invoice number, and amount billed for each budget line and total amount billed.
5. The State reserves the right to withhold part or all of the contract funds if the State does not receive timely documentation of the successful completion of contract deliverables outlined in Attachment A.
6. Invoices and any required reports shall reference this contract number and be submitted electronically to:

Emily Trantum
Contracts and Grants Administrator
Department of Vermont Health Access (DVHA)
312 Hurricane Lane
Williston, VT 05495-2087
emily.trantum@state.vt.us
802-879-5946

7. The total maximum amount payable under this contract for the period of January 12, 2015 through April 20, 2015 shall not exceed **\$140,700.00**

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 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 \$2,000,000 per claim, and \$5,000,000 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 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 and at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

11. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

12. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

13. Taxes Due to the State:

- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

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

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

- 15. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.
- 16. No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
- 17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
- 18. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.
- Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at:
<http://bgs.vermont.gov/purchasing/debarment>
- 19. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

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

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

Section 10 of Attachment C is amended by adding the following which is inserted at the end of the existing paragraph:

Notwithstanding the foregoing or anything in this Agreement, nothing this Section or any audit or inspections hereunder, shall violate or cause contractor to violate any of Contractor's professional standards, privacy, confidentiality or legal obligations and, provided further, that, to the degree necessary to adhere to the requisite professional standards, Contractor's work papers and other proprietary materials are excluded from such audit. The State agrees that to the degree possible and reasonable under the circumstances, Contractor will be given advance notice of an audit initiated by the State. The State agrees not to initiate more than one audit per State Fiscal Year.

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

Section 10 of Attachment F is amended by adding the following, which is inserted at the end of the existing paragraph:

Contractor shall retain sole and exclusive ownership of and all right, title and interest in and to Contractor's administrative communications, records, files and working papers relating to the work, and any know-how, concepts, techniques, methodologies, ideas, processes, models, templates, tools, utilities, routines and trade secrets that (i) existed prior to, or were developed independent of, this engagement or (ii) may have been discovered, created or developed by Contractor as a result of its own efforts during this engagement, which are of general application and do not contain State Confidential Information (collectively, the "Contractor Property"). State shall acquire no right to or interest in the Contractor Property, except for, upon full payment of all amounts due Contractor under the statement of work, a non-exclusive, non-transferable, royalty-free right to use such Contractor Property solely in connection with State's permitted use of the Deliverables to the extent any Contractor Property is incorporated therein. State will not sublicense or otherwise grant any other party any rights to use, copy or otherwise exploit or create derivative works from the Contractor Property.

3. Reasons for Modifications:

These changes clarify the professional responsibilities of the Contractor, and Contractor's ownership interests.

APPROVAL:

ASSISTANT ATTORNEY GENERAL

DATE: _____

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

ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.
2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org

3. **Medicaid Program Contractors:**

Inspection of Records: Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to:

Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and Inspect and audit any financial records of such Contractor or subcontractor.

Subcontracting for Medicaid Services: Having a subcontract does not terminate the Contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the Contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the Contractor or subcontractor's performance is inadequate. The Contractor agrees to make available upon request to the Agency of Human Services; the Department of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers.

Medicaid Notification of Termination Requirements: Any Contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Department of Vermont Health Access, Managed Care Organization enrollee notification requirements.

Encounter Data: Any Contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency.** The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required

to pay for such services.

5. **Voter Registration.** When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.
6. **Drug Free Workplace Act.** The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.
7. **Privacy and Security Standards.**

Protected Health Information: The Contractor shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this contract. The Contractor shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

Other Confidential Consumer Information: The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

Social Security numbers: The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911(c)(3)).
9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

10. **Intellectual Property/Work Product Ownership.** All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement - including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement - or are a result of the services required under this grant - shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion - unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30 days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

The Contractor shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor's materials.

11. **Security and Data Transfers.** The State shall work with the Contractor to ensure compliance with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Contractor of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Contractor to implement any required.

The Contractor will ensure the physical and data security associated with computer equipment - including desktops, notebooks, and other portable devices - used in connection with this agreement. The Contractor will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. The Contractor will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, the Contractor shall securely delete data (including archival backups) from the Contractor's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

12. **Computing and Communication:** The Contractor shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Contractor as part of this agreement. Options include, but are not limited to:

1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

The State will not supply e-mail accounts to the Contractor.

13. **Lobbying.** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an

employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

14. **Non-discrimination.** The Contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.

Attachment F - Revised AHS -12/10/10

ATTACHMENT H BUSINESS PARTNER AGREEMENT

This Business Partner Agreement (“Agreement”) is entered into by and between **the State of Vermont, Agency of Human Services operating by and through its Department of Vermont Health Access (“DVHA”)** and **Grant Thornton LLP (“Business Partner”)** as of **March 12, 2015 (“Effective Date”)**. This Agreement supplements and is made a part of the Contract to which it is attached.

DVHA and Business Partner (“the Parties”) agree to comply with the terms of this Agreement and the applicable standards promulgated under the Patient Protection and Affordable Care Act of 2010 (Public Law 111-148) as amended by the Health Care and Education Reconciliation Act (Public Law 111-152), and referred to collectively as the Affordable Care Act (ACA), and 45 CFR §155.260, “Privacy and security of personally identifiable information.” Business Partner information that constitutes protected health information (PHI) may have additional standards to which the Business Partner must adhere, which would be set out in a separate agreement, subject to review and agreement by the parties.

1. Definitions All capitalized terms in this Agreement have the meanings identified in this Agreement and 45 CFR Part 155, “Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act.”

- 1.1 The term “**Services**” includes all work performed by the Business Partner for or on behalf of DVHA that requires the access, collection, use and/or disclosure of personally identifiable information (PII).
- 1.2 The term “**PII**” refers to personally identifiable information in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name.
- 1.3 The term “**Minimum Functions**” includes all work performed (or Contracted to be performed) pursuant to subparts D, E, H, and K of 45 CFR 155, if such work requires the Business Partner to create, collect, use, or disclose PII.
- 1.4 The term “**Agreement**” refers to this Business Partner Agreement, which details the privacy and security requirements that the Parties must adhere to.
- 1.5 The term “**Individual**” includes applicants, enrollees, and qualified individuals applying for coverage at the Vermont Health Insurance Exchange or Medicaid Agency.
- 1.6 The term “**Breach**” means the loss of control, compromise, and unauthorized disclosure, acquisition, access, or use, and any similar term referring to situations where: (a) PII is used for an unauthorized purpose, or (b) persons other than authorized users have access or potential access to PII.

2. Authorized Uses/Disclosures of PII

- 2.1 Except as limited in this Agreement, Business Partner may only create, collect, use or disclose PII to the extent necessary to perform Services specified in the underlying Contract with DVHA or as required by law or applicable professional standards (such as those set forth by the American Institute of CPAs (AICPA) or the SEC). In the course of providing Services, Business Partner shall not use or disclose PII in any manner that would constitute a violation of 45 CFR §155.260 if used or disclosed by DVHA.
- 2.2 Business Partner may make PII available to its employees who need access to perform Services and/or Minimum Functions, provided that Business Partner makes such employees aware of the creation, collection, use and disclosure restrictions in this Agreement and binds them to comply with

such restrictions. Business Partner must also require workforce compliance with 45 CFR §155.260 when employees create, collect, use, or disclose PII in the course of providing Services.

2.3. Notwithstanding anything to the contrary herein, nothing in this Agreement will cause Grant Thornton LLP to violate any of its obligations or requirements (including any disclosure requirements) pursuant to any applicable professional standards (such as those set forth by the American Institute of CPAs (AICPA) or the SEC) or pursuant to any accounting oversight or regulatory body.

3. **Privacy Requirements** Uses and disclosures of PII to carry out the Services identified in the Contract must be of the minimum amount of PII necessary to perform the services. Business Partner may not create, collect, use or disclose PII gathered for the purposes listed in 45 CFR §155.260(a)(1) while performing Minimum Functions unless the creation, collection, use or disclosure is consistent with this Agreement or with the written policies and procedures identified by the State in accordance with 45 CFR §155.260. In addition, Business Partner must ensure workforce compliance with these policies and procedures.

4. **Security Safeguard Requirements**

Business Partner shall implement and use appropriate reasonable safeguards to prevent the use or disclosure of PII except as provided for by this Agreement, an Interconnection Security Agreement, if applicable, and as set forth in 45 CFR 155.260(a)(3)(vii) and (4).

5. **Documenting and Reporting Breaches**

Business Partner shall report to DVHA any Breach of PII by Business Partner as soon as it (or any of its employees or agents) becomes aware of such Breach, and in no case later than one (1) hour after it (or any of its employees or agents) become aware of the Breach. If DVHA determines that a Breach of PII occurred for which one of Business Partner's employees or agents was responsible, upon its request, Business Partner shall provide notice to the individual(s) whose PII was the subject of the Breach. When requested to provide notice, Business Partner shall consult with DVHA about the timeliness, content and method of notice, and shall receive DVHA's approval concerning these elements, such approval not to be unreasonably withheld, conditioned, or delayed. The cost of notice and related remedies shall be borne by Business Partner. Business Partner shall also be responsible for any reporting as required by 9 V.S.A. § 2435.

6. **Mitigation and Corrective Action Requirements** Business Partner shall mitigate, to the extent practicable, any harmful effect that is known to it of a Breach of PII. Business Partner shall, draft and carry out a reasonable plan of corrective action to address any incident of impermissible collection, use or disclosure of PII, subject to DVHA's prior review and written approval, such approval not to be unreasonably withheld, conditioned, or delayed.

7. **Requirements for Agreements with Third Parties** Business Partner may only disclose PII to its agents, including subcontractors, for the purposes authorized by this Agreement. Business Partner shall ensure that any agent (including any subcontractor) to whom it provides PII received from DVHA or created or received by Business Partner on behalf of DVHA agrees in a written agreement to the same PII restrictions and conditions that apply through this Agreement to Business Partner. Business Partner must enter into the written agreement and obtain the prior written consent of DVHA before any use or disclosure of PII to such

agent. The written agreement must identify DVHA as a direct and intended third party beneficiary with the right to enforce any Breach of the agreement concerning the use or disclosure of PII. Business Partner shall provide a copy of the signed agreement to DVHA upon request.

8. Termination

- 8.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by either party or until all of the PII provided by DVHA to Business Partner or created or received by Business Partner on behalf of DVHA is destroyed or returned to DVHA subject to Section 9.
- 8.2 If Business Partner breaches any material term of this Agreement, DVHA, without liability or penalty, may either: (a) provide in writing an opportunity and time frame for Business Partner to cure the breach and terminate the Contract if Business Partner fails to cure; or (b) immediately terminate the Contract if DVHA believes that cure is not reasonably possible. DVHA has the right to seek to cure any breach by Business Partner and this right, regardless of whether DVHA cures such breach, does not lessen any right or remedy available to DVHA at law, in equity, or under the Contract, nor does it lessen Business Partner's responsibility for such breach or its duty to cure such breach.
- 8.3 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: The provisions of this Agreement shall continue to apply if the State determines that it would be infeasible for Business Partner to return or destroy PII as provided according to the contract.

9. Responsibility for the Return/Destruction of PII

- 9.1 Business Partner, in connection with the expiration or termination of the Contract, shall return or destroy, at the discretion of DVHA, all PII received from DVHA or created or received by Business Partner on behalf of DVHA pursuant to the Contract that Business Partner still maintains within thirty (30) days after such expiration or termination. Business Partner shall not retain any copies of the PII. Within the thirty (30) day period, Business Partner shall certify in writing to DVHA that (1) all PII has been returned or destroyed, and (2) Business Partner does not continue to maintain any PII.
- 9.2 Business Partner shall provide to DVHA notification of any conditions that Business Partner believes make the return or destruction of PII infeasible. If DVHA agrees that return or destruction is infeasible, Business Partner shall extend the protections of this Agreement to such PII and limit further uses and disclosures of such PII to those conditions that make the return or destruction infeasible for so long as Business Partner maintains such PII.
- 9.3 Pursuant to Section 9.2, both parties understand and agree that Business Partner's work papers may contain copies of personally identifiable information (PII). Business Associate's work papers shall remain its sole and exclusive property. At all times Business Associate agrees to maintain the security and privacy of any PII in a manner consistent with this Agreement and as required by applicable law.

- 10. Penalties** Business Partner understands that it may be subject to a civil penalty, in addition to other penalties that may be prescribed by law, resulting from the improper creation, collection, use or disclosure of PII. In addition, violations of this Agreement may result in notification by DVHA to law enforcement officials and regulatory, accreditation, and licensure organizations.

11. **Training** Business Partner shall participate in training regarding the use, confidentiality, and security of PII at DVHA's request.

12. **Miscellaneous**

- 12.1 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.
- 12.2 Business Partner shall cooperate with DVHA to amend this Agreement from time to time as is necessary for DVHA to comply with 45 CFR §155.260 or any other standards promulgated under the ACA, or DVHA's contractual obligations to CMS.
- 12.3 Any ambiguity in this Agreement shall be resolved to permit DVHA to comply with 45 CFR §155.260, or any other standards promulgated under the ACA, or DVHA's contractual obligations to CMS.
- 12.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., the ACA) in construing the meaning and effect of this Agreement.
- 12.5 As between Business Partner and DVHA, DVHA owns all PII provided by DVHA to Business Partner or created or received by Business Partner on behalf of DVHA.
- 12.6 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement.

The following provisions apply only to those Business Partners that will be accessing Federal Tax Information (FTI).

As applicable, DVHA and Business Partner ("the Parties") agree to comply with the terms of this Agreement and the Language for General Services and Technology Services pursuant to IRS Publication 1075, Exhibit 7:

13. **General Services; Performance** In performance of this Contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:
- 13.1 All work will be performed under the supervision of the contractor or the contractor's responsible employees.
- 13.2 Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.

- 13.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- 13.4 No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- 13.5 The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- 13.6 DVHA will have the right to void the Contract if the contractor fails to provide the safeguards described above.

14. General Services; Criminal/Civil Sanctions

- 14.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 14.2 Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such Person shall also notify such officer and employee that such authorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.
- 14.3 Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position,

has possession or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- 14.4 Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review as part of the certification and at least annually annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, /RC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

15. **General Services; Inspection** The IRS and (is this DVHA?) shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

16. **Technology Services; Performance** In performance of this Contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- 16.1 All work will be done under the supervision of the contractor or the contractor's employees.
- 16.2 Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- 16.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- 16.4 The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- 16.5 Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will

be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

- 16.6 All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- 16.7 No work involving FTI furnished under this Contract will be subcontracted without prior written approval of the IRS.

17. Technology Services; Criminal/Civil Sanctions

- 17.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 17.2 Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such Person shall also notify such officer and employee that such authorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.
- 17.3 Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession or access to agency

records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

- 17.4 Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review as part of the certification and at least annually
- annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, /RC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

- 18. Technology Services; Inspection** The IRS and DVHA shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

(Rev:11/15/13)

**Department of Vermont Health Access
Request for Approval to Subcontract**

Date of Request: _____

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

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

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

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

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

Business Office Review

Comments: _____

Approval: _____ Title: _____ Date: _____

8. Required: *Contractor cannot subcontract until they receive this signed approval from the State of Vermont. On the reverse side of this form there is language that must be included by the contractor in all subcontracting agreements.*

Language to be included from State of Vermont Bulletin 3.5 in all subcontracting agreements:

10. 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.

11. 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.

20. 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.

21. 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.