

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and the National Association of Insurance Commissioners, with a principal place of business in 1100 Walnut Street, Suite 1500, Kansas City, Missouri 64106 (hereafter called "Contractor"). The Contractor's form of business organization is a non-profit. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is personal services generally on the subject of access and use of web services the Contractor has developed to transfer System for Electronic Rate and Form Filing (SERFF) data between State Departments for the purpose of running the Health Benefit Marketplace. Detailed services to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** This is a no-cost agreement. The State will provide no financial reimbursement for the services to be performed by the Contractor. In consideration, State will receive access and use of SERFF and the Contractor will receive goodwill toward its company.
4. **Contract Term.** The period of Contractor's performance shall begin on August 1, 2016 and end on July 31, 2018 plus the option of two additional one year extensions.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office is required.

Approval by the Secretary of Administration is required.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Contacts and Notices:** The contacts for this award are as follows:

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>	<u>For the Contractor</u>
Name:	Susan Whitney	Thomas M. Kester	Joy Morrison
Phone #:	802-241-0258	802-241-0405	816-783-8471
E-mail:	susan.whitney@vermont.gov	thomas.kester@vermont.gov	jmorrison@naic.org

To the extent notices are made under this agreement, such notices shall only be effective if committed to writing and sent to the following persons as representatives of the parties:

CONTRACTOR:

Andrew J. Beal, Chief Operating Officer and  
Chief Legal Officer, NAIC  
1100 Walnut St, Suite 1500  
Kansas City, MO 64106  
[ABeal@naic.org](mailto:ABeal@naic.org)

STATE:

DVHA General Counsel  
Department of Vermont Health Access (DVHA)  
NOB 1 South, 280 State Drive  
Waterbury, VT 05671-1010  
[AHS.DVHALegal@vermont.gov](mailto:AHS.DVHALegal@vermont.gov)

Written notices may be sent by electronic mail except for the following notices, which must be sent by United States Postal Service certified mail: termination of contract, contract actions, damage claims, breach notifications, alteration of this paragraph.

**8. 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.

**9. Attachments.** This contract consists of 17 pages including the following attachments, which are incorporated herein:

- Attachment A - Specifications of Work to be Performed
- Attachment B - Payment Provisions
- Attachment C – Standard State Provisions for Contracts and Grants
- Attachment D - Modifications of Customary Provisions of Attachment C or Attachment F
- Attachment F - Agency of Human Services' Customary Contract Provisions

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:**

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STEVEN COSTANTINO, COMMISSIONER      DATE  
AHS/DVHA  
NOB 1 South, 280 State Drive  
Waterbury, VT 05671-1010  
Phone: 802-241-0239  
Email: [Steven.Costantino@vermont.gov](mailto:Steven.Costantino@vermont.gov)

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ANDREW J. BEAL,      DATE  
CHIEF OPERATING OFFICER/ CHIEF LEGAL OFFICER  
1100 Walnut Street, Suite 1500  
Kansas City, Mo 64106  
Phone: 816-783-8471  
Email: [ABeal@naic.org](mailto:ABeal@naic.org)

## ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

This agreement allows the State to use the web services the Contractor has developed to transfer System for Electronic Rate and Form Filing (SERFF) data between State departments (DFR to DVHA for the purposes of running Vermont Health Connect). This service provides the carrier plan data that will be loaded into the State's Vermont Health Connect (VHC) to support plan selection and downstream enrollment processing for Vermonters who select qualified health plans through VHC. This agreement also provides guidance to the State on how the data passed through the Contractor needs to be protected.

1. **LICENSE:** The Contractor hereby grants to the State a non-exclusive, non-transferable right and license, for the term specified in Section 4 of the contract, to access and use the Plan Management Web Services Solution (hereafter referred to as the "Product") in accordance with this Agreement and the applicable SERFF Plan Management Web Services User Guide. The State may not reverse engineer, reverse assemble or reverse compile Product.
2. **CONTRACTOR OBLIGATIONS:** The Contractor will maintain system availability for the Product in accordance with the system hours and normal maintenance windows as defined in the SERFF Plan Management Web Services User Guide except for unexpected incidents or emergency repairs or maintenance related to unexpected incidents or on days when SERFF code will be released. The Contractor will, as outlined in the SERFF Plan Management Web Services User Guide: maintain appropriately trained staff to provide support to users and to make modifications to the services as required by the business needs; log and track all Plan Management Web Services user requests for service and schedule maintenance; and provide access to Plan Management Web Services and the backend databases associated with SERFF. The Contractor is responsible for testing all of the SERFF system and Plan Management Web Services. All Plan Management Web Services internal testing will be completed before any modified version of the SERFF System and Plan Management Web Services is released to the beta environment for Plan Management Web Services user acceptance testing ("UAT") by Plan Management Web Services users.
3. **STATE OBLIGATIONS:** The State is responsible for following the guidelines for testing, security, and access as outlined in the Plan Management Web Services User Guide including providing staff with the appropriate skill set to develop and support integration activities. The Plan Management Web Services User Guide may be periodically updated by the Contractor. The State must be in compliance with any updates to the Guide. Under no circumstances should the design of any of the web services making up the SERFF system be altered. All integrations with the SERFF system must be pre-approved by The Contractor. The State shall not interact with the production environment for the Plan Management Web Service through untested versions of a product provided by the State.
4. **RESTRICTIONS ON LICENSE:** The State agrees that it will not offer, distribute or otherwise make available all or any portion of the Product to any third party. For purposes of this Agreement, a third party is one who is not an officer, director, agent, consultant, contractor, grantee or employee of the State unless otherwise required by law or authorized in writing by the Contractor.
5. **WARRANTIES:** Contractor does not guarantee uninterrupted access to the Product. All data is furnished to Licensor by third parties, and the truth, accuracy, currency, and completeness thereof is necessarily dependent thereon regardless of the media on which the SERFF Product is provided. Except as provided elsewhere in this Agreement, Contractor has MADE NO WARRANTY OR PROMISE,

EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. TITLE/INDEMNIFICATION: Contractor is the owner of the Product and retains all rights of title in the Product and in the sources, development and future licensing or other disposal of said Product and enhancements and updates thereto, including its presentation format. Components of the Product may be provided by third parties and Contractor warrants that it has the right to grant to the State the license to use the Product in accordance with this Agreement. It is expressly understood that the State obtains no rights in the Product furnished by the Contractor except as expressly provided in this Agreement.

Notwithstanding anything to the contrary in any other provision of this Agreement, this is not a contract of sale, and the State obtains no rights under Section 109 of the Copyright Act of 1976. It is recognized that the Product is the exclusive property of the Contractor, and the State agrees to take no action adverse to such rights of the Contractor as owner of the Product and as sole copyright proprietor. The State agrees to preserve the Contractor's notice of copyright or other proprietary rights in the form and in the manner as may be specified by the Contractor from time to time. Such notices shall be preserved and affixed to all copies of the Product furnished or permitted to be made hereunder.

The Contractor represents and warrants that the Product does not and will not violate or infringe any enforceable patent, trademark, trade secret, copyright or similar intellectual property right. The Contractor will defend all claims and pay all losses that a court finally awards or any settlement attributed to any claim that the Product infringes upon an enforceable patent, trademark, trade secret or copyright, provided the State (1) gives the Contractor prompt written notification of any such claim; and (2) allows the Contractor to control, and fully cooperates with the Contractor in the defense and all related settlement negotiations. The Contractor shall only be liable for direct damages suffered by the State.

7. NONASSIGNABILITY: The State agrees that neither this Agreement nor any of the rights granted hereunder shall be transferable or assignable to any other party without the express prior written permission of the Contractor.
8. BREACHES BY STATE: The State must be in continuous compliance with the current version of the SERFF Plan Management Web Services User Guide. In the event the Contractor deems the State to be in breach of this Agreement or the SERFF Plan Management Web Services User Guide, the Contractor shall provide written notice to the State specifying said breach and giving the State thirty (30) days within which the State may cure said breach and avoid termination. If said breach is not cured within thirty (30) days of notification, this Agreement may be terminated by the Contractor. The Contractor reserves the right to deny access, with or without notice, to Plan Management Web Services user to SERFF environments where a Plan Management Web Services user product has or is suspected to have an unreasonable, material negative impact on SERFF System and/or Plan Management Web Services performance, places undue burden on hardware or software, and/or in any way jeopardizes other existing SERFF System or Plan Management Web Services users. Should such activity occur in a production environment, access may be denied immediately and may not be restored until such time as the Plan Management Web Services user product has been corrected and re-tested against a Contractor test environment to ensure that changes have been made to minimize the unreasonable impact to other users. In the event this Agreement is terminated by virtue of the State's breach of the terms hereof, the State, immediately upon receipt of notice of termination or cancellation, shall cease all attempts to connect to the Plan Management Web Services.

9. **TRADE SECRETS: CONFIDENTIAL INFORMATION AND NON DISCLOSURE:** The State and Contractor each acknowledge that in the course of this Agreement, each may acquire information about the other, its business activities and operations, technical information, trade secrets, copyrighted material, and its client and financial information. The Contractor acknowledges that the State is subject to Vermont's Access to Public Records Law, 1 V.S.A. Subchapter 3, with respect to any information in the State's possession, and that such information may be subject to disclosure upon request from a third party to the extent that such information does not qualify for one of the statutory exemptions from disclosure. Such exemptions from disclosure include trade secrets, as defined at 1 V.S.A. § 317(c)(9). If the State receives a request for disclosure of information which the Contractor has identified as a trade secret, the State will notify the Contractor so as to give the Contractor a reasonable opportunity to contest the disclosure, within the time limits and parameters established by the Access to Public Records law. Determination whether to disclose information claimed by Contractor to be a trade secret shall be a matter for the State's discretion. By agreeing to these terms, Contractor does not waive any rights or remedies it may have to contest the State's determination.
10. **PUBLICITY:** Both parties agree that they will not use the name of the other party in any form or attribution in connection with any endorsement in connection with the terms of this Agreement without the express prior written permission of the other party.
11. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of Vermont, U.S.A.
12. **ENTIRE AGREEMENT:** This Agreement supersedes all other agreements or representations either oral or written between The Contractor and the State regarding current or any prior Product furnished, sold or licensed from the Contractor. No waiver, alteration or modification of provisions in this Agreement shall be binding unless subsequently made in writing and signed by duly authorized representatives of The Contractor and the State.

The provisions of Sections 5, 6, 7, 8, 9, 10, and 11 of this Attachment A shall survive the termination of this Agreement.

**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 Subcontractor Compliance 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 Subcontractor Compliance Form, the State shall review and respond within five (5) business days. A fillable PDF version of this Subcontractor Compliance Form is available upon request from the DVHA Business Office. Under no circumstance shall the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Subcontractor Compliance Form to:

Thomas M. Kester  
Department of Vermont Health Access  
NOB 1 South, 280 State Drive  
Waterbury, VT 05671-1010

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**

1. This agreement has no cost obligation on the part of the State and will be handled as a no-cost contract.
2. No benefits or insurance will be reimbursed by the State.
3. No invoicing will be required.
4. The total maximum amount payable under this contract shall not exceed \$0.

**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 **\$2,000,000** 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 X and Bulletin 3.5 Section IV.B.

(End of Standard Provisions, State of Vermont – Attachment C - 9-1-2015\_rev)

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

**Requirements of Attachment C Are Hereby Modified:**

**1. Attachment C, Section 6 “Independence, Liability,” is modified by deleting the text in its entirety and replacing it with the following:**

- a. The Contractor will act in an independent capacity and not as officers or employees of the State.
- b. The Contractor shall defend the State and its officers and employees against all third party claims or suits and any damages or losses from such third party claims or suits which arise in whole or in part from any negligent act or omission or intentional misconduct on the part of the Contractor or of any agent of the Contractor. The State shall promptly notify the Contractor in the event of receipt of notice of any such claim or suit, and the Contractor shall promptly retain counsel and, at its option, either provide a complete defense against or settle the third party claim or suit.
- c. After a final judgment or settlement the Contractor may request recoupment of specific defense costs and may file suit in the Superior Court of the State of Vermont, Washington Civil Division requesting recoupment. The Contractor shall be entitled to recoup costs upon a showing that such costs were entirely unrelated to the defense of any claim arising from a negligent act or omission or intentional misconduct of the Contractor or its agent.
- d. The Contractor 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 third party claims to suits for which the Contractor is obligated to defend the State and its officers and employees.
- e. EXCEPT IN THE EVENT OF PERSONAL INJURY OR PROPERTY DAMAGE, VIOLATION WITH RESPECT TO CONTRACTOR’S OBLIGATIONS WITH RESPECT TO CONFIDENTIALITY AS SET FORTH IN THIS AGREEMENT, OR IN THE EVENT OF CONTRACTOR’S GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY DAMAGES OF THE STATE WHICH MAY HAVE BEEN UNFORESEEABLE BY THE PARTIES AT THE TIME OF CONTRACTING OR OTHERWISE NOT PROXIMATELY CAUSED BY CONTRACTOR BREACH OF THIS CONTRACT OR FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES OF THE STATE, WHETHER OR NOT FORESEEABLE, WITH RESPECT TO THE CONTRACTOR’S PERFORMANCE UNDER THIS AGREEMENT. THE CONTRACTOR’S LIABILITY TO THE STATE UNDER THIS CONTRACT FOR ALL CLAIMS MADE RELATING TO BREACH OR NON-PERFORMANCE OF THIS CONTRACT SHALL BE LIMITED TO THREE TIMES THE MAXIMUM AMOUNT OF THE CONTRACT. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO DAMAGES OR LIABILITY ARISING FROM THIRD PARTY CLAIMS AGAINST THE STATE REGARDLESS OF CAUSE WHICH ARE TO BE INDEMNIFIED BY THE CONTRACTOR UNDER THIS CONTRACT.

**2. Section 7 of Attachment C is modified by deleting the Automotive Liability section in its entirety.**

**Requirements of Attachment F Are Hereby Modified:**

**3. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, and 15 of Attachment F are not applicable to this Contract.**

**4. Section 3 of Attachment F is modified by deleting the text in its entirety and replacing it with the following paragraph:**

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 45 CFR 95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*.

**APPROVAL:**

\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL

DATE: \_\_\_\_\_

*State of Vermont – Attachment D  
Revised AHS – 10-30-2010*

**ATTACHMENT F**  
**AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS**

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

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

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

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

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

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

**Federal Medicaid System Security Requirements Compliance:** All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*.
4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency.** The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written

translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Department of Vermont Health Access  
Subcontractor Compliance Form**

Date: \_\_\_\_\_

Original Contractor/Grantee Name: \_\_\_\_\_ Contract/Grant #: \_\_\_\_\_

Subcontractor Name: \_\_\_\_\_

Scope of Subcontracted Services:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is any portion of the work being outsourced outside of the United States?  YES  NO  
(If yes, do not proceed)

All vendors under contract, grant, or agreement with the State of Vermont, are responsible for the performance and compliance of their subcontractors with the Standard State Terms and Conditions in Attachment C. This document certifies that the Vendor is aware of and in agreement with the State expectation and has confirmed the subcontractor is in full compliance (or has a compliance plan on file) in relation to the following:

- Subcontractor does not owe, is in good standing, or is in compliance with a plan for payment of any taxes due to the State of Vermont
- Subcontractor (if an individual) does not owe, is in good standing, or is in compliance with a plan for payment of Child Support due to the State of Vermont.
- Subcontractor is not on the State's disbarment list.

In accordance with State Standard Contract Provisions (Attachment C), the State may set off any sums which the subcontractor owes the State against any sums due the Vendor 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 in Attachment C.

\_\_\_\_\_  
Signature of Subcontractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Vendor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Received by DVHA Business Office

\_\_\_\_\_  
Date

**Required: Contractor cannot subcontract until this form has been returned to DVHA Contracts & Grants Unit.**