

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Onpoint Health Data, with a principal place of business in Portland (hereafter called "Contractor"). The Contractor's form of business organization is a non-profit corporation under Section 501 (c) (3). The Contractor's local address is 254 Commercial Street, Suite 257, Portland, ME 04101. 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 providing quarterly data extracts. 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 \$2,060.00
4. **Contract Term.** The period of Contractor's performance shall begin on February 18, 2015 and end on April 30, 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 is required.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 30 days in advance. Notwithstanding this provision, 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:**

	<u>State Fiscal Manager</u>	State Program Manager	For the Contractor
Name:	Natalie Elvidge	Jeff Ross	James Harrison
Phone #:	802-879-7956	802-879-8201	207-430-0682
E-mail:	Natalie.Elvidge@state.vt.us	Jeffrey.Ross@state.vt.us	jharrison@onpointhealthdata.org

9. **Attachments.** This contract consists of 24 pages including the following attachments, which are incorporated herein:

- Attachment A - Specifications of Work to be Performed
- Attachment B - Payment Provisions
- Attachment C - Customary State Contract provisions
- Attachment D - Modifications of Insurance
- Attachment E - Business Associate Agreement
- Attachment F - Customary Contract Provisions of the Agency of Human Services

The order of precedence of documents shall be as follows:

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

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

**BY THE STATE OF VERMONT:**

**BY THE CONTRACTOR:**

\_\_\_\_\_  
LORI COLLINS, DEPUTY COMMISSIONER      DATE  
312 Hurricane Lane, Suite 201  
Williston, VT 05495-2087  
Phone: 802-879-5901  
Email: Mark.Larson@state.vt.us

\_\_\_\_\_  
JAMES H. HARRISON, PRESIDENT/CEO      DATE  
Onpoint Health Data  
254 Commercial Street, Suite 257  
Portland, ME 04101  
Phone: 207-430-0682  
Email: jharrison@onpointhealthdata.org

## ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

### *Purpose:*

In 2010 the Dept. of Financial Regulation's (formally BISHCA) contract with Onpoint Health Data was amended to include the integration and management of Medicaid eligibility and claims data. The amendment to extend the contract was requested by the commissioners of DFR and DVHA as being integral to the data infrastructure required to support the analytical and reporting needs of the State of Vermont. In July of 2013 the management of this contract moved from DFR to the GMCB. The ongoing integration of Medicaid eligibility and claims data with the commercial insurer data supports the State's ability to evaluate health care utilization, spending, and performance on a broader population basis and on a comparative basis for each insurer type.

For the period February 18, 2015 through April 30, 2015 the Contractor is responsible for submitting to the State the deliverables outlined in Attachment A for activities related to providing quarterly data extracts:

### *Deliverables:*

The criteria by which the State/AHS/DVHA gauges a successful load are as follows:

1. Provide quarterly data extracts on the following dates annually: March 31, June 30, September 30, and December 31.
2. All data extracts shall be provided in the VHCURES standard extract format.
3. Receipt of accurate Technical Summary of Changes (TSOC) document from Onpoint Health Data
4. Receipt of accurate Data Dictionary (DD) from Onpoint Health Data
5. Receipt of unencrypted quarterly extract ".txt" files via Onpoint's SFTP site: <sftp.onpointhealthdata.org>
6. TSOC document agrees with DD
7. DD agrees with Onpoint's database schema
8. File layouts agree with TSOC and DD
9. File columns are text qualified with double quotes
10. File columns are delimited with an asterisk
11. File rows are delimited with a carriage return
12. Files are not corrupted
13. Files are ASCII-based and do not contain Oracle-specific encoding
14. Files load successfully to AHS VHCURES database on SQL Server

**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:

Natalie Elvidge  
Contract and Grant Management Specialist  
Department of Vermont Health Access (DVHA)

312 Hurricane Lane, Suite 201  
Williston, VT 05495-2087

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. The Contractor shall submit invoices with a current date of submission, invoice number, and contract number quarterly for the prior quarter's expenses. Contractor invoices shall be submitted no more frequently than quarterly.
2. Upon acceptance of all deliverables outlined in Attachment A (Specifications of Work to be Performed), the Contractor shall invoice the State a maximum of \$515.00 quarterly.
3. The price of \$515.00 is purchasing quarterly VHCURES extracts that are refreshed from January 2007 through the end of the quarter. These include Medicaid, commercial, and periodic Medicare data files that include: eligibility, medical claims, pharmacy claims as well as supporting reference data on provider and claims level service detail codes.

**Budget**

March 1, 2014 through April 30, 2015

Quarterly data extracts (March 31, June 30, September 30, and December 31)	<b>\$515.00 each</b>
<b>Total</b>	<b>\$2,060.00</b>

4. All payments to the Contractor shall be based upon the State's acceptance of the deliverables outlined in Attachment A. The State reserves the right to withhold part or all of the funds if the State does not receive timely documentation of the successful completion of deliverables as outlined in Attachment A
5. Services performed between March 1, 2014, and the start of this contract that are in conformity with Attachment A can be billed under this contract.
6. No benefits or insurance will be reimbursed by the State.
7. All reports and invoices related to this contract, must reference this contract number and should be submitted in electronic format to:

Jeff Ross  
[Jeffrey.Ross@state.vt.us](mailto:Jeffrey.Ross@state.vt.us)

Natalie Elvidge  
[Natalie.Elvidge@state.vt.us](mailto:Natalie.Elvidge@state.vt.us)

8. The total maximum amount payable under this contract shall not exceed \$2,060.00
9. State of Vermont Payment Terms are Net 30 days from date of invoice

**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: Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain Technology Professional Liability insurance for all services performed under this Agreement, with minimum third party coverage of **\$2,000,000** per claim, **\$3,000,000** aggregate.

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

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

**10. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

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

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

**13. Taxes Due to the State:**

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

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

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

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

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

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

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

N/A

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

N/A

**3. Requirements of Sections in Attachment F are hereby modified:**

**Ownership of System; Use of the System**

Notwithstanding paragraph 10 of Attachment F, the System is and shall remain the sole and exclusive property of Contractor. Subject to the terms, conditions and limitations of this Contract, and provided State is not in Material Default of the Contract terms, to the extent the State requires access and use of the System hereunder, Contractor hereby grants to State the non-exclusive, non-transferable right and license during the term of the Contract to: (a) allow authorized users to access and use the System for the purposes contemplated herein; and (b) use, reproduce and distribute copies of the Documentation solely in support of the State's use of the System.

**Use Restrictions**

The State shall not (i) use the System in any manner which is not authorized by this Contract or which violates any applicable law; (ii) copy or reproduce the System, in whole or in part; (iii) modify, translate or create derivative works of the System; (iv) reverse engineer, decompile, disassemble or otherwise reduce the System to source code forms; (v) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for service bureau purposes or otherwise transfer the System or State's right to access and use the System; or (vi) remove or modify any copyright, trademark or other proprietary notice of the System or its licensors. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO CONTRACTOR AND ITS LICENSORS.

**Definitions**

"Authorized Users" means the employees and reporters authorized by the State to access and use the System.

"Documentation" means the user manual and training materials concerning the Onpoint CDM, in printed or electronic format, which Contractor has provided to State, as updated from time to time.

"Improvements" means all updates, upgrades, modifications, customizations, enhancements, error

corrections, and other changes to and derivative works based on the Onpoint CDM and Documentation, regardless of by whom made. Improvements do not include data provided by the State under this contract.

“Material Default” by the State means that an approved payment to Contractor is at least thirty (30) days past due, that Contractor has provided the State with written notice of the past due payment and that the State has failed to make the payment within forty five (45) days of the written notice.

“Onpoint CDM” means Contractor’s proprietary claims data management system, including, without limitation, all internal processing systems and hardware, external interfaces, and tracking, communication and administration features thereof, as well as all software, code and/or algorithms incorporated therein, each as updated from time to time.

“System” means the Onpoint CDM, Documentation and Improvements, including all patent, copyright, trademark, trade secret and other proprietary rights related thereto.

**4. Reasons for Modifications to Attachment C:**

N/A

**5. Reasons for Modifications to Attachment F:**

The System (including any improvements made thereto and any intellectual property rights associated therewith) utilized by Contractor to perform the services under this contract are owned exclusively by the Contractor. No software, computer programs, processes or other systems are being developed by Contractor specifically for the State under this contract.

**Approval:**

**Assistant Attorney General:** \_\_\_\_\_

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

## ATTACHMENT E BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its **Department of Vermont Health Access** (“Covered Entity”) and **Onpoint Health Data** (“Onpoint”) as of February 18, 2015 (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

Covered Entity and Onpoint enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended.

The parties agree as follows:

**1. Definitions.** All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations.

“Agent” means those person(s) who are agents(s) of Onpoint, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c), other than a workforce member of Onpoint.

“Breach” means the acquisition, access, use or disclosure of PHI which compromises the security or privacy of such PHI, except to the extent such access, use or disclosure is excluded from the definition of Breach in 45 CFR § 164.402.

“Business Associate” shall have the meaning given to such term in 45 CFR § 160.103.

“Individual” includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“Protected Health Information” or “PHI” shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Onpoint from or on behalf of Covered Entity.

“Security Incident” means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.

“Services” includes all work performed by Onpoint for or on behalf of Covered Entity that requires the use and/or disclosure of PHI to perform a Business Associate function described in 45 CFR § 160.103 under the definition of Business Associate.

“Subcontractor” means a person or organization to which Onpoint delegates a function, activity or service, other than in the capacity of a member of the workforce of Onpoint.

**2. Identification and Disclosure of Security Officer.** Onpoint shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity’s contract/grant manager the names and contact information of its HIPAA Security Officer and an employee of Onpoint responsible for addressing issues related to Onpoint’s compliance with the terms of this Agreement. This information must be updated any time either of these contacts changes.

**3. Permitted and Required Uses/Disclosures of PHI.**

3.1 Except as limited in this Agreement, Onpoint may use or disclose PHI to perform Services, as specified in the underlying grant or contract with Covered Entity. Onpoint shall make reasonable efforts to limit PHI used, disclosed, or requested to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request, in accordance with 45 CFR § 164.502(b). Onpoint shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Onpoint may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

3.2 Onpoint may make PHI available to its employees who need access to perform Services provided that Onpoint makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Onpoint may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 17 or, (b) as otherwise permitted by Section 3.

3.3. Onpoint acknowledges that it is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Covered Entity.

**4. Business Activities.** Onpoint may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Onpoint's proper management and administration or to carry out its legal responsibilities. Onpoint may disclose PHI received in its capacity as Business Associate to Covered Entity for Onpoint's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if Onpoint obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and such agreement requires the person or entity to notify Onpoint, within three (3) business days, except to the extent a longer period is allowed under Section 6.4 of this Agreement, (which in turn will notify Covered Entity within three (3) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in this Section 4 must be of the minimum amount of PHI necessary to accomplish such purposes.

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

**6. Documenting and Reporting Breaches.**

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

6.2 Onpoint shall provide Covered Entity with the names of the individuals whose Unsecured PHI has

been, or is reasonably believed to have been, the subject of such Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR § 164.404(c), and, if requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Onpoint shall continue to provide to Covered Entity information concerning such Breach as information becomes available to Onpoint. Onpoint shall require its Subcontractor(s) to agree to these same terms and conditions as required by Section 9 of this Agreement.

6.3 When Onpoint determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach of Unsecured PHI, and therefore does not necessitate notice to Covered Entity, it shall document its assessment of risk, conducted as set forth in 45 CFR § 164.402(2). When requested by Covered Entity, Onpoint shall make its risk assessments available to Covered Entity. When requested by Covered Entity, Onpoint shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a Breach of Unsecured PHI is the responsibility of a member of Onpoint's Subcontractor's workforce, Onpoint shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Onpoint shall make these assessments and reports available to Covered Entity.

6.4 Onpoint shall require its Subcontractor(s) to report to Onpoint any Breach of Unsecured PHI of which Subcontractor becomes aware within three (3) business days of it becoming aware of such Breach, as required by Sections 4 and 9 of this Agreement. Notwithstanding anything to the contrary in this Agreement, with respect to any Subcontractor engaged by Onpoint prior to the Effective Date, such Subcontractor(s) shall be required to report to Onpoint any Breach of Unsecured PHI of which such Subcontractor becomes aware within ten (10) business days of its discovery of such Breach. However, if Onpoint renews or enters into a new contract with such Subcontractor after the Effective Date, such contract shall require that such Subcontractor shall be required to report to Onpoint any Breach of Unsecured PHI of which such Subcontractor becomes aware within three (3) business days of its discovery of such Breach.

**7. Mitigation and Corrective Action.** Onpoint shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Onpoint shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Onpoint shall make its mitigation and corrective action plans available to Covered Entity. Onpoint shall require a Subcontractor to agree to these same terms and conditions as required by Section 9 of this Agreement.

**8. Providing Notice of Breaches.**

8.1 If Onpoint reasonably determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Onpoint's employees or agents was responsible constitutes a Breach of Unsecured PHI, and if requested by Covered Entity, Onpoint shall provide notice to the individual(s) whose PHI has been the subject of such Breach. When requested to provide notice, Onpoint shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice shall be borne by Onpoint. Covered Entity acknowledges and agrees that Onpoint may not have sufficient contact information regarding the affected individuals to allow Onpoint to meet its obligations under this Section 8.1. Onpoint's obligations under this Section 8.1 shall be subject to Covered Entity providing Onpoint with the necessary contact information regarding the affected individuals.

8.2 If Onpoint reasonably determines that an impermissible acquisition, access, use or disclosure of

PHI by a Subcontractor of Onpoint constitutes a Breach of Unsecured PHI, and if requested by Covered Entity or Onpoint, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Onpoint or its Subcontractor provide notice, Onpoint shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1. Covered Entity acknowledges and agrees that Onpoint and its Subcontractor(s) may not have sufficient contact information regarding the affected individuals to allow Onpoint or its Subcontractor(s) to meet their obligations under this Section 8.2. Onpoint's and its Subcontractor's obligations under this Section 8.2 shall be subject to Covered Entity providing Onpoint and/or its Subcontractor(s), as applicable, with the necessary contact information regarding the affected individuals.

8.3 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Onpoint reported the Breach of Unsecured PHI to Covered Entity.

8.4 The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from such Breach, 4) a brief description of what Onpoint is doing to investigate such Breach, to mitigate harm to individuals and to protect against further Breaches of Unsecured PHI, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.5 Onpoint shall notify individuals whose PHI was involved in Breaches of Unsecured PHI as specified in 45 CFR § 164.404(d) (methods of individual notice). In addition, when such Breach involves the PHI of more than 500 residents of Vermont, Onpoint shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

**9. Agreements with Subcontractors.** Onpoint shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Onpoint with respect to such PHI, except as otherwise expressly provided in this Agreement. Onpoint must enter into this Business Associate Agreement before any use by or disclosure of PHI to such Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Onpoint shall provide a copy of the Business Associate Agreement it enters into with a Subcontractor to Covered Entity upon request. Onpoint may not make any disclosure of PHI to a Subcontractor without the prior written consent of Covered Entity, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the above, with respect to any Subcontractor engaged by Onpoint prior to the Effective Date, Onpoint's contract with the Subcontractor is not required to identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. However, if Onpoint renews or enters into a new contract with such Subcontractor after the Effective Date, it must identify Covered Entity as a third party beneficiary as required above, and must provide a copy of the written agreement upon Covered Entity's request. With respect to any Subcontractor engaged by Onpoint prior to the Effective Date, as identified by Onpoint prior to the Effective Date, Covered Entity hereby consents to the disclosure of PHI to such Subcontractors.

**10. Access to PHI.** Onpoint shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR § 164.524. Onpoint shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business

days, Onpoint shall forward to Covered Entity for handling any request for access to PHI that Onpoint directly receives from an Individual.

**11. Amendment of PHI.** Onpoint shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an Individual. Onpoint shall make such amendments in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Onpoint shall forward to Covered Entity for handling any request for amendment to PHI that Onpoint directly receives from an Individual.

**12. Accounting of Disclosures.** Onpoint shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Onpoint shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Onpoint shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Onpoint shall forward to Covered Entity for handling any accounting request that Onpoint directly receives from an Individual.

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

**14. Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Onpoint or created or received by Onpoint on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 18.7.

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

**15. Return/Destruction of PHI.**

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

15.2 Onpoint shall provide to Covered Entity notification of any conditions that Onpoint believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Onpoint shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Onpoint maintains such PHI. This shall also apply to all Agents and Subcontractors of Onpoint.

**16. Penalties and Training.** Onpoint understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Onpoint shall consider participation in training regarding the use, confidentiality, and security of PHI.

**17. Security Rule Obligations.** The following provisions of this Section apply to the extent that Onpoint creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

17.1 Onpoint shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Upon request from Covered Entity, Onpoint shall provide Covered Entity an overview of its information security program which shall include available documentation regarding its security policies and procedures.

17.2 Onpoint shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Onpoint must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Onpoint shall provide a copy of the written agreement to Covered Entity upon Covered Entity's request. Onpoint, in its sole discretion, may redact from such written agreement any confidential or proprietary information. Onpoint may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the above, with respect to any Agent or Subcontractor engaged by Onpoint prior to the Effective Date, Onpoint's contract with the Agent or Subcontractor is not required to identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. However, if Onpoint renews or enters into a new contract with the Agent or Subcontractor after the Effective Date, it must identify Covered Entity as a third party beneficiary as required above, and must provide a copy of the written agreement upon Covered Entity's request. With respect to any Agent or Subcontractor engaged by Onpoint prior to the Effective Date, as identified by Onpoint prior to the Effective Date, Covered Entity hereby consents to the disclosure of Electronic PHI to such Subcontractors.

17.3 Onpoint shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Onpoint or its Agent or Subcontractor). Onpoint shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than three (3) business days after it becomes aware of the incident. Upon request by Covered Entity, Onpoint shall provide Covered Entity the information necessary for Covered Entity to investigate the Security Incident to meet its obligations under HIPAA. Notwithstanding anything to the contrary in this Agreement, with respect to any Subcontractor engaged by Onpoint prior to the Effective Date, such Subcontractor(s) shall be required to report to Onpoint any Security Incident of which such Subcontractor becomes aware

within ten (10) business days of its discovery of such Security Incident. However, if Onpoint renews or enters into a new contract with such Subcontractor after the Effective Date, such contract shall require that such Subcontractor shall be required to report to Onpoint any Security Incident of which such Subcontractor becomes aware within three (3) business days of its discovery of such Security Incident.

17.4 Onpoint shall comply with reasonable policies and procedures Covered Entity implements regarding the Services to allow Covered Entity to meet its obligations under HIPAA, provided that Covered Entity provides Onpoint with timely notice of such policies and procedures.

**18. Miscellaneous.**

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract/grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract/grant continue in effect.

18.2 The parties shall cooperate to amend this Agreement from time to time as is necessary for the parties to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

18.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule, and the HIPAA omnibus final rule) in construing the meaning and effect of this Agreement.

18.5 As between Onpoint and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Onpoint or created or received by Onpoint on behalf of Covered Entity.

18.6 Onpoint shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity even if some of that information relates to specific services for which Onpoint may not be a Business Associate of Covered Entity under the Privacy Rule.

18.7 Onpoint is prohibited from directly or indirectly receiving any remuneration in connection with the sale of PHI as described in 45 CFR § 164.502(a)(5)(ii). Onpoint will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing PHI may not be sold without the written consent of either the Covered Entity or the Individual who is the subject of the PHI.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity agrees that it would be infeasible for Onpoint to return or destroy PHI as provided in Section 15.2 and (b) the obligation of Onpoint to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

**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 Request for Approval to Subcontract

Date of Request: \_\_\_\_\_

Original Contractor Name:	_____
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:** \_\_\_\_\_

***Required: Contractor cannot subcontract until they receive this signed approval from the State of Vermont. The following 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:**

- e. 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.
- f. 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.
- g. 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.