DVHA Routing Form

Revision Date 5/1/12

Type of Agreement: **Contract** Agreement #: **26141** Form of Agreement: **New** Amendment #:

Name of Recipient: **Pacific Health Policy Group** Vendor #: **18342**

Program Manager : **Jim Giffin** Phone #: **802-871-3005**

Agreement Manager: **Meaghan Kelley** Phone #: **802-871-3302**

Brief Explanation of Agreement: **Implementation assistance for Vermont's 1115 waivers, and other Medicaid programs and initiatives**

Start Date: **March 17, 2014** End Date: **March 31, 2015** Maximum Amount: **$600,000.00**

Amendments Only: Maximum Prior Amount: **$0.00** Percentage of Change: **0.00%**

Bid Process (Contracts Only): ☐ Standard ☐ Simplified ☒ Sole Source ☐ Statutory ☐ Master Contract SOW

Funding Source

Global Commitment 93.778	**$350,000.00**		
Other: IDF	**$250,000.00**		

Contents of Attached Packet

☒ AA-14
☒ Sole Source Memo
☐ Qualitative/Justification Memo
☒ Attachments A, B, C & F
☐ Attachment D - Modifications to C & F
☒ Attachment E - Business Associate Agreement
☐ Attachment G - Academic Research
☐ MOU
☐ Other:

Reviewer		Reviewer Initials	Date In	Date Out
DVHA Grant & Contract Administrator	**Kate Jones**	K.J.	March 19, 2014	
DVHA BO	**Jill Gould**	J.G.	March 19, 2014	
DVHA Commissioner or Designee	**Mark Larson, Commissioner**	M.L.	March 19, 2014	
AHS Attorney General	**Seth Steinzor, AAG**	S.S.	March 19, 2014	
Following Approvals for Contracts Only:				
AHS CIO				
AHS Central Office	**Diane Nealy**	D.N.	March 19, 2014	
AHS Secretary	**Dixie Henry**	D.H.	March 19, 2014	

Vision Account Codes:

☐ FFATA Entry ☐ Grant Tracking Module Vision PO #: Initials & Date: Approval & B/C:

STATE OF VERMONT CONTRACT SUMMARY AND CERTIFICATION - - - - - - - - - - Form AA-14 (8/22/11)

Note: All sections are required. Incomplete forms will be returned to department.

I. CONTRACT INFORMATION:

Agency/Department: AHS/ DVHA **Contract #:** 26141 **Amendment #:**

Vendor Name: Pacific Health Policy Group VISION Vendor No**:** 18342

Vendor Address: 1725 McGovern Street, Suite 201, Highland Park, IL 60035

Starting Date: 3/17/2014 **Ending Date:** 3/31/2015 **Amendment Date:**

Summary of agreement or amendment: Implementation assistance for Vermont's 1115 waivers, and other Medicaid programs initiatives

II. FINANCIAL INFORMATION

Maximum Payable: $600,000.00 Prior Maximum: $ 0.00 Prior Contract # (If Renewal):

Current Amendment: $0.00 Cumulative amendments: $ 0.00 % Cumulative Change: 0.00 %

Business Unit(s): 3410; ; - [notes:] **VISION Account(s): 507600;**

II. PERFORMANCE INFORMATION

Does this Agreement include Performance Measures tied to Outcomes and/or financial reward/penalties? ☒ Yes ☐ No

Estimated Funding Split: G-Fund % S-Fund % F-Fund % GC-Fund 58.00 % Other 42.00 %

III. PUBLIC COMPETITION

The agency has taken reasonable steps to control the price of the contract or procurement grant and to allow qualified organizations to compete for the work authorized by this contract. The agency has done this through:

☐ Standard bid or RFP ☐ Simplified Bid ☒ Sole Sourced ☐ Qualification Based Selection ☐ Statutory

IV. TYPE OF AGREEMENT & PERFORMANCE INFORMATION

Check all that apply: ☐ Service ☒ Personal Service ☐ Architect/Engineer ☐ Construction ☐ Marketing ☐ Information Technology ☐ Other, describe:

V. SUITABILITY FOR CONTRACT FOR SERVICE

☒ Yes ☐ No ☐ n/a If this is a Personal Service contract, does this agreement meet all 3 parts of the "ABC" definition of independent contractor? (See Bulletin 3.5) If NO, then contractor must be paid through Payroll

VI. CONTRACTING PLAN APPLICABLE:

Are one or more contract or terms & conditions provisions waived under a pre-approved Contracting Plan? ☐ Yes ☒ No

VII. CONFLICT OF INTEREST

By signing below, I certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business.

☐ Yes ☒ No Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this party was selected for improper reasons: (If yes, explain)

VIII. PRIOR APPROVALS REQUIRED OR REQUESTED

☒ Yes ☐ No Agreement must be approved by the Attorney General under 3 VSA §311(a)(10) (personal service)

☒ Yes ☐ No I request the Attorney General review this agreement as to form
No, already performed by in-house AAG or counsel: _____ (initial)

☐ Yes ☒ No Agreement must be approved by the Comm. of DII; for IT hardware, software or services and Telecommunications over $100,000

☐ Yes ☒ No Agreement must be approved by the CMO; for Marketing services over $15,000

☐ Yes ☒ No Agreement must be approved by Comm. Human Resources (privatization and retiree contracts)

☒ Yes ☐ No Agreement must be approved by the Secretary of Administration

IX. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL

D.N.

I have made reasonable inquiry as to the accuracy of the above information:

March 19, 2014 E-SIGNED by Mark Larson on 2014-03-19 13:58:17 GMT — Date — Agency / Department Head

March 19, 2014 E-SIGNED by Dixie Henry on 2014-03-19 15:31:47 GMT — Date — Agency Secretary or Other Department Head (if required)

March 19, 2014 E-SIGNED by Seth Steinzor on 2014-03-19 15:10:40 GMT — Date — Approval by Attorney General

Date — CIO — Date — CMO

Date — Approved by Commissioner of Human Resources

March 19, 2014 E-SIGNED by Michael Clasen on 2014-03-19 15:48:50 GMT — Date — Secretary of Administration

E-SIGNED by Emily Byrne on 2014-03-19 15:36:59 GMT

VERMONT

State of Vermont
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston VT 05495-2807
dvha.vermont.gov

Agency of Human Services
[Phone] 802-879-5900
[Fax] 802-879-5651

MEMORANDUM

TO: Jeb Spaulding, Secretary of Administration
THROUGH: Doug Racine, Secretary of Agency of Human Services D.H.
FROM: Mark Larson, Commissioner of DVHA M.L.
RE: Sole Source approval for contract with Pacific Health Policy Group

Contract # 26141 Proposed Term: 03/17/14 – 03/31/15 Proposed Value: $600,000

The Pacific Health Policy Group (PHPG) has worked with the State of Vermont and specifically the Agency of Human Services with Medicaid related consulting services since 1994. They have won numerous RFP's over the years and have been meeting DVHA's expectations under their existing and prior agreements. Due to internal conversations around the specific work being performed under this agreement and the payment mechanism between departments, the previous PHPG agreement (#21408) expired before it was able to be amended. It is imperative to the success of our Global Commitment to Health and Choices for Care waiver analysis, federal negotiations, the VSH recovery efforts, and the overall changing landscape of healthcare reform that we have a contractor that is familiar with Vermont's unique programs and innovations as well as the federal CMS, FEMA and HHS landscape.

PHPG is a unique and highly qualified organization who consistently performs above expectations in providing the State with balanced and thorough analysis. Their work has ranged from studies related to the cost and quality of services within the Medicaid program including detailed analysis of services delivered to several of our special populations (such as developmental and mental health service recipients) to preparation of highly detailed federal waiver requests and technical assistance with all levels of federal negotiations. Additionally, PHPG meets standards by:

- consistently producing high quality presentations, whether power point presentations or report documents. Deliverables are easily used with multiple audiences (providers, legislators, advocates);

- involving State staff and the consumer advocacy groups with various projects. Staff and deliverables have been held in high regard by our providers;

- producing timely, thorough and substantive deliverables and is instrumental in helping Vermont conceptualize innovative solutions to various Medicaid and Human Service Delivery challenges;

State of Vermont
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston VT 05495-2807
dvha.vermont.gov

[Phone] 802-879-5900
[Fax] 802-879-5651

Agency of Human Services

- delivering timely and thorough products, are responsive to legislative and CMS requests for information on short notice and possessing good working relationships with CMS staff;
- consistently meeting their performance goals. DVHA has not had to retain any funds from their agreements.

The funding for this contract will be covered by the Global Commitment to Health appropriations and Interdepartmental Transfers from other AHS departments. This contract complies with all mandatory provisions of AOA Bulletin 3.5.

DVHA looks forward to approval of this contract.

APPROVAL: E-SIGNED by Michael Clasen on 2014-03-19 15:48:50 GMT March 19, 2014

JEB SPAULDING, SECRETARY OF ADMINISTRATION DATE

PHPG Contract #26141 Reviewer Comments

Seth Steinzor – Please specify if all State Reps listed must sign off on Task Orders. It is not clear how many or which parties must sign for the Task Order to take effect. Status: Complete

Jill Gould, Diane Nealy, and Emily Byrne all had the same comment: Please clarify the funding source within this agreement. Amounts are incorrect or the routing documents do not match one another. Please specify. Status: Complete – forms and memo have been updated to accurately reflect the funding split

l. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Pacific Health Policy Group, with a principal place of business in 1725 McGovern Street, Suite 201, Highland Park, IL 60035 (hereafter called "Contractor"). The Contractor's form of business organization is a privately-held corporation. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is personal services generally on the subject of implementation assistance for Vermont's 1115 waivers, and other Medicaid programs and initiatives. 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 $600,000.

4. **Contract Term.** The period of Contractor's performance shall begin on March 17, 2014 and end on March 31, 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 suspended or cancelled by either party by giving the other party written notice at least 30 days in advance. Notwithstanding this provision, in the event that federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract with no obligation to pay the Contractor from State revenues.

8. **Attachments.** This contract consists of 28 pages including the following attachments, which are incorporated herein:
Attachment A - Specifications of Work to be Performed
Attachment B - Payment Provisions
Attachment C - Customary State Contract provisions
Attachment E - Business Associate Agreement
Attachment F - Customary Contract Provisions of the Agency of Human Services
Appendix I – Required Forms

The order of precedence of documents shall be as follows:

1). This document
2). Attachment C
3). Attachment A
4). Attachment B
5). Attachment E
7). Attachment F

8). Other Attachments

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

BY THE STATE OF VERMONT: **BY THE CONTRACTOR:**

MARK LARSON, COMMISSIONER	DATE	SCOTT WITTMAN, DIRECTOR	DATE
312 HURRICANE LANE WILLISTON, VT 05495 MARK.LARSON@STATE.VT.US 802-879-5952		1725 MCGOVERN STREET, SUITE 201 HIGHLAND PARK, IL 60035 SWITTMAN@PHPG.COM 224-765-4422	

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED

A. Acronym Clarification

ACA = Affordable Care Act
AHS = Agency of Human Services
CHIP = Children's Health Insurance Program
CMS = Centers for Medicare & Medicaid Services
DVHA = Department of Vermont Health Access
DMH = Department of Mental Health
GC = Global Commitment to Health waiver

B. Authorized Representatives of the State:

Lori Collins, Deputy Commissioner
Department of Vermont Health Access
312 Hurricane Lane
Williston, VT 05495
Lori.Collins@state.vt.us
802-879-5953

Designee:
Stephanie Beck, Director of Health Care Operations, Compliance & Improvement
Agency of Human Services
208 Hurricane Lane
Williston, VT 05495
Stephanie.Beck@state.vt.us
802-871-3265

C. Authorized Representatives of the Contractor:

Scott Wittman, Director
The Pacific Health Policy Group
1725 McGovern Street, Suite 201
Highland Park, IL 60035
swittman@phpg.com
224-765-4422

All work performed under this agreement shall be done under the direction and sole discretion of the Authorized Representative of the State. No work shall be performed unless directed by the Authorized Representatives of both parties.

Tasks

TASK 1: Provide technical assistance to the State to meet Waiver requirements and in the implementation of the Global Commitment to Health 1115 waiver and other Medicaid programs and initiatives

Activities include consultation and assistance to the State to meet waiver and State Plan implementation requirements; assistance with data and report preparation; provision of post-implementation assistance and monitoring program progress; assistance with preparation of any required waiver or State Plan amendment requests or extensions or preparation of any new required waivers or State Plan pages, including revised budget neutrality terms; monitoring budget neutrality and preparing budget neutrality projections based on identified program changes; and participating in waiver or State Plan negotiations with CMS. Each of these tasks is detailed in the following.

TASK 1a: Consultation and assistance to meet Waiver/State Plan requirements and in the implementation of the Global Commitment to Health

Activities include consultation and assistance in meeting budget neutrality and reporting requirements established in waiver Terms and Conditions; assistance with forecasting the State Medicaid budget; and assistance in meeting other waiver Terms and Conditions.

Examples of tasks that can be performed include, but are not limited to:

- develop estimates of budget neutrality status and modeling budget neutrality cost projections compared to program expenditures;
- assisting with the preparation of the State Medicaid budget for covered populations and services;
- forecasting enrollment based on current or proposed policies (the Contractor will develop enrollment projections based on historical enrollment; assess the fiscal impact of actual enrollment estimates compared with projected estimates);
- assisting with evaluation and development of initiatives for the Medicaid managed care;
- assist in the analysis of GC and CHIP alignment or changes;
- assist with the creation and negotiation of the CMS required plan for GC transition to ACA implementation including:
    - creation of legislative summaries and impact analysis
    - updates to the preliminary transition plan
- assist the state with negotiations and explorations with CMS related to 1115 waiver continuation, ACA transitions, health exchange development, Act 48 and other state health care initiatives
- monitoring, revising and negotiating with CMS and affected AHS departments inter- governmental agreements (IGAs) that are required to implement the provisions of the waiver that ensures Medicaid managed care compliance;
- project changes in enrollment based on proposed program or policy changes;
- advise on the performance of State administrative functions;
- provide technical assistance to the State in program monitoring and operations;
- assist in evaluating program policy options, including any fiscal impact;
- assist in the development of provider rate changes and assessing the impact on budget neutrality; and
- advise on the data review for actuarial consulting engagements.

TASK 1b: Assistance with data and report preparation

The Contractor will assist the State in developing data reports to support program monitoring and waiver compliance. Reports include historical and projected expenditures and caseload; management reports or any component programs of the Global Commitment to Health waiver; and other reports that need to be forwarded to the Legislature, Agency of Human Services or CMS.

TASK 1c: Provide post-implementation assistance and assist in monitoring program progress

The Contractor will assist the State with post-implementation activities of the Global Commitment to Health. Assistance will include consulting on day-to-day decision-making and technical assistance in the development or revision of program policies. The Contractor will provide technical assistance to the State and its contractors, if necessary, to ensure effective and efficient operation of the program. Contractor will participate in various AHS inter-departmental implementation committees and work groups on an ongoing and regular basis, and assist in addressing issues related to implementation identified as a result of the committee process.

The Contractor will participate in follow-up activities with CMS, including development or amendments to the waiver protocol document, compile information needed to respond to CMS requests for additional information, research policy and practices in other states, develop or revise reporting procedures and specifications, and develop or revise program monitoring tools.

Contractor will provide on-going assistance to ensure that the waiver is operating in compliance with the waiver's Terms and Conditions. Assistance will include monitoring reporting functions, preparation of documentation requested by CMS, and technical assistance in preparation for any CMS site reviews and audits.

TASK 1d: Provide assistance in responding to waiver or program options and CMS directives

The Contractor will analyze new waiver, legislative opportunities or CMS directives made to the states. The contractor will (as necessary) develop enrollment/utilization projections; assess the fiscal impact or cost; develop estimates of budget neutrality impact; advise on responding or not responding to these new options; provide technical assistance in program development and response to CMS directives; prepare applications or other required materials; assist in negotiations with CMS or other federal or private agencies.

Task 1 Approval Process
All work must be pre-approved by the State Authorized Representative. In addition to the State Authorized Representatives listed in Section B above, the following State Authorized Representative has authority to approve work under Task 1:

Selina Hickman, Policy Director
Department of Vermont Health Access
312 Hurricane Lane
Williston, VT 05495
Selina.Hickman@state.vt.us
802-879-5939

All work must be reviewed and accepted by the State Authorized Representative(s) before the Contractor

shall submit an invoice to the State. Work performed under Task 1 shall not exceed $300,000 during the term of this agreement. Work shall not exceed $20,000 per month without prior written approval from the Task 1 State Authorized Representative(s).

Ad-Hoc phone calls and e-mail communications from various State staff will not be paid for under this agreement unless previously approved with a Task Order by the Authorized Representative(s) of the State.

TASK 2: Provide assistance in policy and program development of initiatives for long term care services and the Choices for Care waiver.

The Contractor will make its resources available in any manner the State deems appropriate for assessing and implementing the State's long term care programs.

On an as needed and requested basis, the Contractor will provide technical assistance in support of the 1115(a) Choices for Care waiver. Specific tasks may include the following: program analysis and recommendations for changes in policy related to CMS or other issues; database development and financial modeling; development of waiver amendments, negotiation changes in waiver Terms and Conditions, and budget neutrality parameters with CMS; assistance with amending the waiver protocol document; evaluating and monitoring budget neutrality; evaluating expanded service options; reviewing the adequacy of program monitoring criteria and procedures; and assisting in meeting any specified waiver reporting requirements.

As requested by the State, Contractor will assist with any required data analysis or projections related to the Choices for Care 1115 waiver or CMS issues that will impact on that waiver including alignments with Global Commitment to Health and other state and federal health reform efforts.

Task 2 Approval Process
All work must be pre-approved by the State Authorized Representative(s). In addition to the State Authorized Representatives listed in Section B above, the following State Authorized Representative has authority to approve work under Task 2:

Marybeth McCaffrey, Director
Department of Disabilities, Aging & Independent Living
802-371-7824
Marybeth.McCaffrey@state.vt.us

All work must be reviewed and accepted by the State Authorized Representative(s) before the Contractor shall submit an invoice to the State. Work performed under Task 2 shall not exceed $50,000 during the term of this agreement. Work shall not exceed $4,000 per month without prior written approval from the Task 2 State Authorized Representative(s).

Ad-Hoc phone calls and e-mail communications from various State staff will not be paid for under this agreement unless previously approved with a Task Order by the Authorized Representatives of the State

Ad Hoc

Work performed under the Ad Hoc section of this agreement shall not exceed $250,000.

1. Ad Hoc Task Order Process
   a. The State may initiate the process leading to a new project assignment by requesting a proposal

from the Contractor. The request will be prepared by the State and will include the following:

i. Project Contact

ii. Type of Activity (e.g., Technical Assistance, Consultation, Data Assistance)

iii. Project Goal(s)

iv. Brief Description of Project

v. Project Deliverable(s)

vi. Estimated Project Duration/Phasing

vii. Description of Expected Timeline of Project

viii. Funding Source and Financial Responsible Party

b. Ad Hoc Projects may include, but shall not be limited to:

i. Providing implementation assistance with the State's special education initiative

ii. Providing assistance to the Department of Mental Health in the development of behavioral health programs and services

iii. Providing consultation and implementation assistance to the Vermont Department of Corrections for inmate health services

iv. Providing assistance on systems enhancements and data reporting and collections activities derived from the Medicaid Management Information System (MMIS) claims system

v. Conducting research and recommending revisions regarding areas of health care concern conveyed through the Agency of Human Services or legislative initiatives

2. Review and Finalization of New Projects

Proposals for new projects under the Task Order section of this agreement shall be submitted to the Contractor by the State. Upon consideration of the proposal, the State and Contractor must complete the Task Order Form (Appendix I). The Contractor has the right to submit modifications or deny any Task Order submitted by the State. The final Task Order document shall receive approval by the State, and be signed by the Contractor, the State Authorized Representative, and the DVHA Business Office. The Task Order must indicate: scope, source of funds, payment provisions, points of contact, ownership of data and any applicable data use agreement, and project specifics. Each Task Order must clearly define payment either by rate per hour or deliverable received and approved. Each Task Order must be pre-approved before any work shall begin. The State will not pay for services that are not previously approved in a Task Order by both authorized representatives listed within this section. The State Authorized Representative and the DVHA Business Office have final authority over whether or not a Task Order is initiated under this agreement.

A Task Order may assign a Project Manager, who will act as the Authorized State Representative, solely per that task and up to the maximum amount per that task. The Project Manager assigned to a specific Task Order is to sole person to assign work under to the Contractor under that particular Task Order.

Changes to a Task Order shall be accomplished by written modification as agreed to by both parties listed below and will be reflected in a new Task Order.

Task Orders must be approved by both parties listed below:

Meaghan Kelley, Contracts and Grants Administrator
Department of Vermont Health Access
312 Hurricane Lane
Williston, VT 054945
Meaghan.Kelley@state.vt.us

Lori Collins, Deputy Commissioner
Department of Vermont Health Access
312 Hurricane Lane
Williston, VT 05495
Lori.Collins@state.vt.us

3. Project Deliverables
At the conclusion of a project assignment, the final deliverables/products prepared in accordance with what was agreed upon in the executed Task Order document will be submitted to the State. Acceptance of the deliverables/products by the State shall represent the Contractor's fulfillment of the project assignment. The State will have sixty days to acknowledge the final deliverables/products or to reject them. Rejection of the final deliverable regarding research projects will not be based on the failure to achieve particular results.

4. Ad-Hoc phone calls and e-mail communications from various State staff will not be paid for under this agreement unless previously approved with a Task Order by the Authorized Representatives of the State.

Request for Approval to Subcontract

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 Contract form Appendix I (Required Forms) in order to seek approval from the State prior to signing an agreement with any third party. Upon receipt of the Request for Approval to Contract form, the State shall review and respond to the request within five (5) business days. Under no circumstance shall the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Request for Approval to Contract form to:

Meaghan Kelley
Department of Vermont Health Access
312 Hurricane Lane
Williston, VT 05495
Meaghan.Kelley@state.vt.us

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

State Oversight

The State must approve any permanent or temporary changes to or deletions from the Contractor's management, supervisory and key professional personnel assigned to this contract. The State reserves the right to terminate the contract if personnel so assigned are changed or modified without such State approval. The number of days spent on-site shall be at the State's direction and with the State's approval.

Contractor and State will establish timeline and/or other performance expectations at time of the specific project assignment within each Task Order. The Authorized Representative of the State will assign and prioritize all tasks for all AHS departments outside of DVHA. The State and the Contractor will establish regular reviews of progress as needed, based on the specific assignment. Reviews may be in person, conference call or electronic. Overall contract performance and assignments will be reviewed at least quarterly.

In the event the Contractor's work towards task(s) is unsatisfactory, the Contractor shall produce a corrective action plan and submit to the State for approval, and the State shall monitor the Contractor to ensure that the work towards tasks is rectified as satisfactory.

ATTACHMENT B
PAYMENT PROVISIONS

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

1. Contractor invoices shall be submitted no more frequently than monthly, but no later than quarterly, and then invoice shall be printed on the Contractor's official letterhead, reference this contract number, include the date of invoice, remit address, the title and name of personnel performing work, the actual number of hours worked during the specified billing period, a detailed description of the work completed, organized by Task and priced per the Rate Chart below, any other applicable expenses, the total amount billed, and be signed off by an authorized representative of the Contractor. The State shall pay the Contractor an hourly rate in accordance with the Rate Chart below. The State has the right to deny payment of any invoice that does not align with the stipulations listed within this Section 1. The State can request that the Contractor amend any invoices that are not consistent with the provisions stated above. In the event that the Contractor must amend an invoice at the request of the State, the Contractor shall adjust the date of the invoice to accurately reflect the resubmittal date. Invoices should be submitted to:

   Business Office
   Department of Vermont Health Access
   312 Hurricane Lane, Suite 201
   Williston, VT 05495

2. No benefits, expenses, or insurance will be reimbursed by the State.

3. The total maximum amount payable under this contract shall not exceed $600,000. The Contractor shall bill for actual hours worked or deliverables accepted and approved by the State Authorized Representative. Services performed under Task 1 shall not exceed a maximum amount of $300,000 and shall not exceed a maximum amount of $20,000 per month without prior written approval by the State Authorized Representative. Services performed under Task 2 shall not exceed a maximum amount of $50,000 and shall not exceed a maximum amount of $4,000 per month without prior written approval by the State Authorized Representative. Services performed under Task Orders shall not exceed a maximum amount of $250,000 and shall not exceed the maximum amount as specified within each individual Task Order.

4. With prior written notice of unsatisfactory performance, the State will initiate a retainage of 10% from the invoice total until corrective action is complete, and a satisfactory work product is delivered. The release of retainage will take place after satisfactory conclusion of, or performance towards, a given task. The State may release all or partial payment of retainage, pending the successful completion and approval of each individual deliverable. The Contractor may submit an invoice for retainage of a particular task immediately following successful completion and State acceptance of the deliverable. Retainage invoices will be reviewed by the State before payment. Failure to meet timelines or to deliver required products may result in forfeiture of retainage.

Payments shall be remit to:

The Pacific Health Policy Group
1725 North McGovern Street, Suite 201
Highland Park, IL 60035

5. The Contractor shall request approval from the State before new personnel can begin work pertaining to this agreement. The State has the right to reject any of the Contractor's personnel if he or she does not suit the needs of this agreement. Requests may be submitted to the DVHA Business Office. The approved personnel are reflected in the Rate Chart below:

Rate Chart		
Billable Rate per Hour Not to Exceed Task Maximum Amount		
Name	**Position**	**Rate Per Hour**
Scott Wittman	Director	$280.00
Andrew Cohen	Director	$280.00
Susan Besio	Senior Associate	$250.00
Jeff Dodson	Senior Associate	$250.00
Betsy Forrest	Senior Associate	$250.00
Andrea Kmickikewycz	Senior Associate	$250.00
Charissa Mayer	Senior Associate	$250.00
Suzanne Santarcangelo	Senior Associate	$250.00
Paul Velligan	Senior Associate	$250.00
Paul Wittman	Senior Associate	$250.00
Theresa Shultz	Associate	$160.00

ATTACHMENT C
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

1. **Entire Agreement.** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

2. **Applicable Law.** This Agreement will be governed by the laws of the State of Vermont.

3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.

4. **Appropriations:** If appropriations are insufficient to support this Agreement, the State may cancel on a date agreed to by the parties or upon the expiration or reduction of existing appropriation authority. In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to fund this Agreement from State revenues.

5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

   The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The Party shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Agreement.

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

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

7. **Insurance**: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverage is in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

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

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

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

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

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

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

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

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

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

   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. 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 will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started

before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

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

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

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

a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

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 subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of

or reorganization of the Party.

16. No Gifts or Gratuities: Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

17. Copies: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

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 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 **Pacific Health Policy Group** ("Business Associate") as of **April 17, 2014** ("Effective Date"). This Agreement supplements and is made a part of the Contract to which it is an attachment.

Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 ("Privacy Rule"), and the Security Standards, at 45 CFR Parts 160 and 164 ("Security Rule"), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

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 the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

"Breach" means the acquisition, access, use or disclosure of protected health information (PHI) which compromises the security or privacy of the PHI, except as excluded in the definition of Breach in 45 CFR § 164.402.

"Business Associate shall have the meaning given 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 Business Associate from or on behalf of Agency.

"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 the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR § 160.103 under the definition of Business Associate.

"Subcontractor" means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

2. Identification and Disclosure of Privacy and Security Offices. Business Associate and Subcontractors 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 both the HIPAA Privacy Officer

and HIPAA Security Officer. 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, Business Associate may use or disclose PHI to perform Services, as specified in the underlying grant or contract with Covered Entity. The uses and disclosures of Business Associate are limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the underlying agreement. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

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

3.3 Business Associate shall be directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Covered Entity, and for impermissible uses and disclosures, by Business Associate's Subcontractor(s), of the PHI that Business Associate handles on behalf of Covered Entity and that it passes on to Subcontractors.

4. Business Activities. Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the Agreement requires the person or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) 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 Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

5. Safeguards. Business Associate, 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, Business Associate 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). Business Associate 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 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines

that a notification would impede a criminal investigation or cause damage to national security.

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

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It 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 is the responsibility of a member of its Subcontractor's workforce, Business Associate 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, Business Associate shall make these assessments and reports available to Covered Entity.

6.4 Business Associate shall require, by contract, a Subcontractor to report to Business Associate and Covered Entity any Breach of which the Subcontractor becomes aware, no later than two (2) business days after becomes aware of the Breach.

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

8. **Providing Notice of Breaches**.

8.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate.

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate 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

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 Business Associate reported the Breach 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 the Breach, 4) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

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

9. **Agreements with Subcontractors**. Business Associate shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the Business Associate Agreement it enters into with a subcontractor to Covered Entity upon request. Business associate may not make any disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

10. **Access to PHI**. Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR § 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

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

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

13. **Books and Records**. Subject to the attorney-client and other applicable legal privileges, Business

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

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 Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 18.7.

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

15. Return/Destruction of PHI.

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

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

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

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

17.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

17.2 Business Associate 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. Business Associate 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. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

17.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or Subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than two (2) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

17.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

18. <u>Miscellaneous.</u>

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 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

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 Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

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

18.7 Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI. Business Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.

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 determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.

2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org

3. **Medicaid Program Contractors**:

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

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

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

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

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

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

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

to pay for such services.

5. **Voter Registration**. When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

6. **Drug Free Workplace Act.** The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.

7. **Privacy and Security Standards.**

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

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

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

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

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a) (3) & 33 V.S.A. §6911(c) (3)).

9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

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

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

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

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

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

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

    a. 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.

    b. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

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

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

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

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

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

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

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

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

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

    Attachment F - Revised AHS -12/10/10

APPENDIX I – REQUIRED FORMS

Request for Approval to Subcontract

Date of Request: _____

Original Contractor Name: _____ **Contract #:** _____

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 Contact Person: _____ 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. On the reverse side of this form there is language that must be included by the contractor in all subcontracting agreements.

Pacific Health Policy Group Contract #26141
Task Order 001 *[numbered consecutively]*

Task Title:	
Responsible Fiscal Party - List Department(s):	
Amount Requested for Approval:	
Affiliate Number/Internal Financial Information:	
Funding Source:	*[CFDA # if different than original]* Budget Approval _____ (Initials)
Effective Dates:	
Project Manager Contact Information:	

1. Scope of Work

2. Deliverables

3. Payment Provisions

Payment terms must specify if payments are based on an hourly rate or deliverables. State estimated hours and rate per hour if payments are based on an hourly rate. Deliverables shall be tied to payment.

Approval:

[Contractor]	[Contact person]	
Approval Signature		Date
DVHA Business Lead:	[Contact Person]	
Approval Signature		Date
DVHA Contract Administrator	[Contact Person]	
Approval Signature		Date

Comments: _____

Must be signed by all parties prior to commencement of work