

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Vermont Information Technology Leaders, Inc., with a principal place of business in Montpelier, VT (hereafter called "Contractor"). The Contractor's form of business organization is a corporation. The Contractor's local address is 1 Mill Street Suite 289, Burlington, VT 05401. 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 Vermont Health Information Exchange Network and related products and services. The Contractor shall conduct HIE Expansion, Connectivity, Access, or Data Quality projects as 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 \$1,008,245.
4. **Contract Term.** The period of Contractor's performance shall begin on July 1, 2016 and end on June 30, 2017. Work performed between July 1, 2016 and the signing or execution of this agreement that is in conformity with Attachment A may be billed under this agreement. The Contractor agrees that in exchange for consideration of the option to bill for services performed, all terms and conditions described in this agreement shall apply to any and all services performed for or on behalf of the State. The Contractor agrees that by submitting invoices, bills, or otherwise seeking compensation for services performed prior to the finalization of this agreement or signing of this agreement, the Contractor is agreeing to the application of all terms of this contract to that period and to that work. The Contractor further agrees to defend, indemnify, and hold the State harmless for any claim, dispute, non-contractual cost or charge, or any liability whatsoever, whether in law, equity, or otherwise, which arises from or is connected to the work performed prior to the execution of this agreement. The Contractor further agrees that these terms apply regardless of whether the work is accepted by the State, and regardless of whether payment is issued by the State to the Contractor for the work in question.
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.

Approval by the Department of Information and Innovation is required.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Contacts and Notices:** The contacts for this award are as follows:

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>	<u>For the Contractor</u>
Name:	Meaghan Kelley	Richard Terricciano	John Evans
Phone #:	802-241-0393	802-585-0862	802-861-1935
E-mail:	Meaghan.Kelley@vermont.gov	Richard.Terricciano@vermont.gov	Jevans@vitl.net

**DVHA Monitoring of Contract:**

The parties agree that the DVHA official State Program Manager is solely responsible for the review and approval of invoices presented by the Contractor. To the extent notices are made under this agreement, such notices shall only be effective if committed to writing and sent to the following persons as representatives of the parties:

**CONTRACTOR:**

John Evans, President and CEO  
1 Mill Street, Suite 249  
Burlington, VT 05401  
[JEvans@vitl.net](mailto:JEvans@vitl.net)

**STATE:**

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

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

**8. Subcontractor Requirements:** Per Attachment C, Section 19, if the Contractor chooses to subcontract work under this agreement, the Contractor must first fill out and submit the Subcontractor Compliance Form (Appendix I – Required Forms) in order to seek approval from the State prior to signing an agreement with a third party. Upon receipt of the completed Subcontractor Compliance Form, the State shall review and respond within five (5) business days with approval or if additional information is needed. Approval of a subcontract may be contingent upon the State’s review of the proposed subcontract agreement. The Contractor shall be fully responsible for any work completed by its contractors and consultants. All work performed by subcontractors and consultants is subject to all conditions and requirements included in this Agreement. The Contractor shall notify the State utilizing the Subcontractor Compliance Form upon renewal of any subcontract.

Under no circumstance may the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Subcontractor Compliance Form to:

Meaghan Kelley, Contract Manager: [Meaghan.Kelley@vermont.gov](mailto:Meaghan.Kelley@vermont.gov)

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

**9. 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.

**10. Attachments.** This contract consists of 42 pages including the following attachments, which are incorporated herein:

- Attachment A - Specifications of Work to be Performed
- Attachment B - Payment Provisions
- Attachment C – Standard State Provispions for Contracts and Grants
- Attachment D - Modifications of Customary Provisions of Attachment C or Attachment F
- Attachment E - Business Associate Agreement
- Attachment F - Agency of Human Services’ Customary Contract Provisions
- Appendix I – Required Forms

The order of precedence of documents shall be as follows:

- 1). This document
- 2). Attachment D
- 3). Attachment C
- 4). Attachment A
- 5). Attachment B
- 6). 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:**

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STEVEN COSTANTINO, COMMISSIONER  
NOB-1 South, 280 State Drive  
Waterbury, VT 05671  
Phone: 802-879-5901  
Email: Steven.Costantino@Vermont.gov

DATE

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JOHN K. EVANS, MHA, FACHE, PRESIDENT & CEO  
DATE  
Montpelier, VT 05602  
Phone: 802-223-4100  
Email: JEvans@vitl.net

## ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

### 1 Background:

The purpose of this agreement is to support the on-going design, development, and implementation of services in support of the Vermont Information Technology Leader's (VITL) efforts to fully align with Vermont's health care reform initiatives. The services included will enhance technologies for the Vermont Health Information Exchange (VHIE) or enhance the adoption of technologies for connection to the VHIE.

There are 3 projects included in the scope of this agreement: Interfaces – New Types, VITLAccess Onboarding, and Clinical Data Quality Analytics. These three projects will be performed by the Contractor or the Contractor's sub-contractors, including the Contractor's existing Health Information Exchange vendor.

For each of the 3 projects, there is a maximum amount available:

Interfaces-New Types: \$147,000  
VITLAccess Onboarding: \$265,000  
Clinical Data Quality Analytics: \$596,245

### 2 Definitions:

- 2.1 ADT Message means a category of Health Level 7 message format typically used for patient demographics updates and for admission, discharge and transfer events.
- 2.2 Blueprint means the Vermont Blueprint for Health, a State program authorized by 18 V.S.A. Chapter 13 which defines Blueprint as a "program for integrating a system of health care for patients, improving the health of the overall population, and improving control over health care costs by promoting health maintenance, prevention, and care coordination and management".
- 2.3 Blueprint Clinical Data Repository means a statewide clinical data registry hosted in Subrecipient's hosting environment and managed by the Blueprint team or designated contractor.
- 2.4 Business Associate means VITL and any contractor working with VITL to fulfill its responsibilities under this Agreement, including but not limited to Data Subcontractor(s), when any of them perform services described in 45 C.F.R. § 160.103
- 2.5 Business Plan means the document that specifically describes a project's scope, schedule, budget, reporting, deliverables and invoicing schedule for a project. It is signed by the contractor CEO and the State HIE Program Director.
- 2.6 CCD means the Continuity of Care Document (CCD or consolidated CDA) specification which is an XML-based markup standard intended to specify the encoding, structure, and semantics of a patient summary clinical document for exchange.
- 2.7 Client Services means assistance and advice provided to health care providers related to the adoption and use of health information and exchange technologies, such as implementation of VITL services, Meaningful Use / MACRA consulting, general HIT consulting, security risk assessment consulting, workflow improvement consulting, and data quality consulting.
- 2.8 CMPI means the Community Master Patient Index in Medicity which links together patient identities from each source organization's Enterprise Master Patient Index (EMPI).
- 2.9 Completed Interface means an interface that has been tested and demonstrated to be fully connected and operational, stable on an ongoing basis, and useable for routine exchange and placed in production by the source (sending) or destination (receiving) organization, and

- containing security features to protect health information.
- 2.10 Data Quality Sprint Project means a project focused on a specific Blueprint clinical site and consisting of activities to improve end-to-end data completeness, accuracy, and consistency and to ensure data integrity through the VHIE.
- 2.11 Data Quality Sprint Management Team means a team responsible to assure that the Blueprint and VITL work together to coordinate participation of all Blueprint organizations in data quality improvement processes. The Team shall be responsible for making decisions and resolving disputes around data quality, data use and consent, and technical issues. This team will be comprised of two (2) members designated by the Blueprint and two (2) members designated by the Subrecipient. The Blueprint will designate the chair or lead for the Sprint Management Team.
- 2.12 eHealth Specialist means a health care information technology (IT) consultant who acts as an advisor to health care providers throughout Vermont. The eHealth Specialists play a key role in assisting providers, including primary care, specialty care, and full continuum providers, with adopting and implementing their Electronic Health Records (EHR) systems, with understanding Meaningful Use (MU) / MACRA requirements, with demonstrating how providers report on the MU of certified EHR systems, and with onboarding, training and integration of the Subrecipient's products and services into daily workflows.
- 2.13 Eligible Hospital (EH) means a hospital that is eligible to participate in the Medicaid Electronic Health Record Incentive Program (EHRIP).
- 2.14 Eligible Provider (EP) means a provider type that is eligible to participate in the Medicaid Electronic Health Record Incentive Program (EHRIP).
- 2.15 Executive Management Team (EMT) means a team comprised of the Executive Director of the Vermont Blueprint for Health, the Subrecipient's CEO, and the State's Department of Vermont Health Access (DVHA) Health Care Reform Manager.
- 2.16 Full Continuum Providers means community mental health designated agencies, home health agencies, long-term supports and services providers, and other community service agencies as may be mutually agreed upon by the State and the Subrecipient.
- 2.17 Health Care Organizations (HCO) includes: the Statewide Clinical Registry, private and commercial labs, hospitals, primary care and specialist practices, ACOs, and community providers.
- 2.18 Health Information Exchange (HIE) means the electronic movement of health-related information among organizations according to nationally recognized standards with the goal of facilitating access to and retrieval of clinical data to provide safe, timely, efficient, effective, equitable, patient-centered care.
- 2.19 Interface means a connection used for transferring certain types of data between a source or destination organization and VHIE with the ability to exchange data at the syntactic level. This includes but is not limited to transfer of demographic and clinical information from HCO Electronic Health Record (EHR) and other clinical or administrative systems, transfer of laboratory orders and results, and transfer of diagnostic procedure orders and results. There are two parts to every interface: the part between the provider and the EHR vendor and the part between the provider and the VHIE. A completed interface is when both parts are in place and data is flowing from the provider to the VHIE.
- 2.20 Interface Development Reimbursement Program means a program whereby HCOs are

- reimbursed for third-party costs incurred by the HCO associated with implementing an interface from their EHR system to the VHIE.
- 2.21 Medicare Access and Children’s Health Insurance Program (CHIP) Reauthorization Act (MACRA) means these programs as defined by Centers for Medicare and Medicaid Services.
- 2.22 Medication History means a compilation of filled prescription information from a medication history service based on data gathered from participating pharmacies across the US, to include Vermont, and includes information such as medication name, strength, quantity, and fill date.
- 2.23 Medicity means the currently contracted vendor that provides infrastructure and other products and services to the Subrecipient in support of the VHIE and other HIE activities.
- 2.24 Onboarding means the process by which the providers at a Health Care Organization (HCO) are authenticated, granted access to a provider service, and trained in the use of that provider service. This process consists of three steps: Profiling the HCO, enrolling authorized providers, and launching the service at that HCO.
- 2.25 Patient Centered Medical Home (PCMH) means a primary care practice that meets the PCMH quality standards defined by National Committee for Quality Assurance, or similar standards that may be adopted by the state in collaboration with healthcare provider organizations.
- 2.26 Secure Data Repository means the secure database where patient demographics and clinical data are stored in the VHIE. The Secure Data Repository shall be architected such that data from one contributing HCO is not comingled with data from other contributing HCOs.
- 2.27 Sequoia Project means a not-for-profit organization with the mission to advance the implementation of secure, interoperable nation-wide health information exchange.
- 2.28 Sprint Management Team means a team responsible for coordinating all participating organizations in the State’s community and field Sprint processes so that no single organization is operating independently. The Team shall be responsible for making decisions and resolving disputes around data quality, Meaningful Use / MACRA, patient consent, and IT issues. This team will be comprised of two (2) members designated by the State and two (2) members designated by the Subrecipient. The State will designate the chair or lead for the Sprint Management Team.
- 2.29 Sprint Project means a project focused on a specific clinical site and consisting of several activities to implement consent and improve end-to-end data completeness, accuracy, consistency and integrity.
- 2.30 Technical Support Services means the team that provides hardware and software support for Subrecipient staff and client facing services to ensure client satisfaction and long-term business relationships with Subrecipient’s clients.
- 2.31 Uptime means the measure of the time a computer system is working and available to the users of the computer system.
- 2.32 VITLAccess means one of several service offerings provided to authorized providers. VITLAccess is a secure internet portal which provides authorized providers, with proper patient consent, a patient centered view of the Personal Health Information (PHI) available through the Vermont Health Information Exchange (VHIE).
- 2.33 VITLDirect is a secure messaging service that enables health care organizations to send messages to other providers, and potentially to their patients. The service may be accessed within an EHR if the EHR has enabled that function, or may be accessed via the web. Documents such

as CCDs can be attached. VITLDirect is also a Health Information Service Provider (HISP) for those EHR vendors that do not offer this service.

### **3 Business Plan Process:**

For each of the projects described in section 1 above, the Contractor will provide a business plan. Project plans will be approved by the State according to the process outlined below.

- A Business Plan (See Appendix I: Required Forms) shall be required for each project. The Business Plan shall define scope, schedule, budget, reporting, deliverables and invoicing schedule for a project. No business plan or combination thereof will encumber funds in excess of the maximum amount set forth in this agreement.
- The Contractor shall complete Business Plan forms and submit for written approval by the State.
- The State will review proposed business plans within a period of ten (10) business days from submission and provide written documentation of approval or any requests for additional information.
- Billable work may commence with the approved start date in the Business Plan.
- Changes to approved Business Plans will be made using the Change Management process detailed in section 4.

Business Plans shall be amended to this agreement when they are approved. The approval of a Business Plan serves to encumber those specific funds for that purpose.

### **4 Change Management Process:**

The State or the Contractor may request a change to the scope, schedule, budget, reporting, deliverables, or invoicing schedule of a previously approved project Business Plan that is funded through this agreement. No Change Request may result in a circumstance that exceeds the schedule or total budget of this agreement. Requested changes that would result in an increase beyond the schedule or total budget of this agreement will require a formal amendment to this agreement. The Change Management process is detailed within this Section.

A Change Request Form (Appendix I – Required Forms) is initiated by the party requesting a change and submitted to the other party for review prior to final State approval. Review of the Change Request shall be completed by both parties and a recommendation for approval or rejection shall be submitted to the Executive Management Team within a period of five (5) business days. Failure by any party to submit feedback, recommendations, or approval/rejection within that period shall be escalated to the Executive Management Team. At no time will a previously approved project's scope, schedule, budget, reporting, deliverables, or invoicing schedule change without an approved Change Request form.

The Executive Management Team – or designees will review Change Request forms and reach a determination within a period of five (5) business days from the date of submittal.

The Change Request Form shall be approved by the State Fiscal Agent before the Change Request is considered effective. Any Change Request that adds scope or impacts the budget is not considered in effect or legally binding until an amendment to this agreement is executed or unless the Change Request form is signed by both the Commissioner of DVHA and the signatory for the Contractor.

### **5 Scope of Work:**

#### **a) Interfaces – New Types:**

Contractor shall develop interfaces for qualified health care organizations that are eligible under the terms of CMS' allowable expenditures with the purpose of expanding the quality and quantity of clinical

data available in the VHIE. Contractor shall: 1. Develop new interfaces with qualified organizations that have at least one existing interface with the VHIE, and 2. Establish initial interfaces between qualified organizations who do not have existing interfaces with the VHIE. Contractor will collaborate with the health care organization and their vendor to determine which interfaces - ADT, lab results, radiology reports, transcribed reports, CCDs, or immunizations - are technically, financially, and operationally feasible. Contractor shall provide written attestation for each completed interface and exchange of data completed in this Agreement's Scope of Work including:

- HCO contributing interfaces: attestation by HCO or EHR vendor contact,
- Outgoing clinical results interfaces to HCO: attestation by HCO or EHR vendor contact,
- Outgoing interfaces to State registry/reporting systems: attestation by DVHA project manager, Registry or Reporting project contact,
- VCCI, VPCH, and DOC interfaces: attestation by VCCI, VPCH, DOC or their respective vendor contact.

This activity will take place over the duration of this contract defined on page 1, section 4, Contract Term. The payments for this project shall be invoiced in accordance with Attachment B of this agreement. Reporting requirements will be in accordance with section 5 of Attachment A.

**Interface projects shall include the following:**

• **Vermont Chronic Care Initiative (VCCI) Interface:**

Contractor shall develop a connectivity interface with Vermont Medicaid's VCCI Care Management system. Contractor shall develop and maintain interfaces for the transmission of patient demographics, lab results clinical summaries, and immunizations (ADT, Lab, CCD, VXU) to their selected EHR vendor. Contractor shall insure that data regarding only Medicaid beneficiaries is transmitted to the selected vendor following approval by treating Medicaid provider organizations and in conformance with a VITL Board approved policy.

• **Vermont Psychiatric Care Hospital (VPCH) Interface:**

Contractor shall develop a connectivity interface with the Vermont Psychiatric Care Hospital's Electronic Health Record system. Contractor shall develop and maintain an exchange of lab results from one Vermont hospital with the selected vendor.

• **Department of Corrections (DOC) Interface:**

Contractor shall develop connectivity interfaces between the Department of Corrections electronic health record vendor and the Vermont Health Information Exchange, including, but not limited to:

- Admission, Discharge, and Transfers (ADTs)
- Continuity of Care Documents (CCDs)
- Immunizations
- Transcribed reports
- Radiology

b) **VITLAccess On-boarding:**

Contractor shall expand the adoption of VITLAccess use and increase the implementation of the State's patient consent policy for the State's eligible providers and eligible hospitals. The client services team of eHealth Specialists shall work through a time-limited onboarding process consisting of three stages: Profile, Enroll, and Launch. The Profile stage includes an introductory meeting and role definitions. The Enroll stage includes User designation and technical set up of users. The Launch stage includes Training and Go-Live. This activity will take place over the duration of this contract defined on page 1, section 4, Contract Term. The payments for this project shall be invoiced in accordance with Attachment B of this

agreement. Reporting requirements will be in accordance with section 5 of Attachment A. Contractor shall submit a quarterly list of the providers targeted in SFY17.

**c) Clinical Data Quality Analytics:**

Contractor shall develop the reporting and analytics to improve clinical data quality within the Contractor's infrastructure and to acquire and deploy the analytic tools necessary to support these activities. These activities include reporting, business intelligence, statistical analysis and other tools as required. The Contractor shall measure data quality and report back these findings in the form of "data quality dashboards" for the use by VHIE contributing organizations. These dashboards will be interactive analytical tools to review specific data measures in support of ACOs, Blueprint for Health, and other health care reform activities. In addition to the Data Quality capabilities, the Contractor shall provide query capabilities, reporting capabilities, and data extracts to participating organizations. Contractor shall provide the State with written acceptance of the data quality dashboards from a minimum of five participating VHIE contributing health care organizations at the end of the term of this agreement. This activity will take place over the duration of this contract defined on page 1, section 4, Contract Term. The payments for this project will be invoiced in accordance with Attachment B of this agreement. Reporting requirements will be in accordance with section 7 of Attachment A. Contractor is required to submit a Business Plan for this project in accordance with Section 3 of Attachment A.

**6 Executive Management Team (EMT)**

The EMT will:

- a) Oversee the activities of this agreement
- b) Determine protocols and metrics to gauge program success
- c) Adjudicate any recommendations to amend this agreement
- d) Adjudicate Change Requests to an approved Business Plan
- e) Communicate with stakeholders, and resolve issues or concerns as may be necessary
- f) Manage the Dispute Resolution process outlined in Section 7

Should the EMT not come to agreement, final determination will be made by the Commissioner of the State's Department of Vermont Health Access. Any decision made by the EMT that requires an amendment shall be done in conformance with Page 2, Paragraph 6, requiring signature by the duly authorized representative of the State and the Contractor.

**7 Reporting & Deliverable Requirements:**

Progress Reports: Contractor shall submit progress reports to the State in accordance with the criteria and frequency detailed in the table below. Release of payments requested in accordance with Attachment B Payment Provisions will be contingent on submittal of the Progress Reports by the Contractor and approval of the Progress Reports by the State. The State reserves the right to request within 10 days that the Contractor provide additional information in the Progress Reports that may be necessary to document deliverables or other progress prior to release of payment. Payment against deliverables constitutes approval. For any Progress Reports or deliverables not so approved, the Contractor shall make all changes required by the State for approval within 30 days of notice from the State. No payment shall issue in advance of the State's approval of Contractor's submission. Monthly reports shall be provided by the 15th of the following month and shall reflect the previous month's information.

At the conclusion of a project assignment, the final deliverables/products prepared in accordance with the executed Business Plan document, as amended by the Change Request process, 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 thirty days to acknowledge the final deliverables/products or to reject them.

<b>Project</b>	<b>Deliverable Detail</b>	<b>Frequency</b>
<b>Interfaces - New Types</b>	A report detailing all Interfaces planned, or in progress under the scope of this agreement. This report shall include the following information: Health Care Organization, site, interface types, and projected completion date.	Initial Project Status Report
<b>Interfaces - New Types</b>	A report detailing all completed Interface projects each month within the scope of this agreement. These reports shall include the following information: Health Care Organization, site, interface types, lessons learned, and actual completion date.	Monthly Project Status Report
<b>Interfaces - New Types</b>	A report detailing all Interface work completed within the term of this agreement. This report shall include the following information: Health Care Organizations, site, interface types, completion date, lessons learned, non-completed interfaces remaining, anticipated completion date of non-completed interfaces, and shall be accompanied by any supporting documentation.	Final Project Status Report, due 6/30/2017
<b>Interfaces - New Types</b>	Contractor shall provide written attestation for each completed interface and exchange of data completed in this Agreement's Scope of Work as defined in Section 5.a. of this agreement.	Monthly Project Status Report
<b>VITLAccess On-Boarding</b>	A report detailing all VITLAccess On-Boarding projects planned, or in progress under the scope of this agreement. This report shall include the following information: Health Care Organization, site, users added per site, and projected completion date.	Initial Project Status Report
<b>VITLAccess On-Boarding</b>	A report detailing all completed VITLAccess On-Boarding projects each month within the scope of this agreement. These reports shall include the following information: Health Care Organization, site, users added per site, lessons learned, and actual completion date.	Monthly Project Status Report
<b>VITLAccess On-Boarding</b>	A report detailing all completed VITLAccess On-Boarding projects completed within the term of this agreement. This report shall include the following information: Health Care Organizations, site, completion date, users added per site, lessons learned, and shall be accompanied by any supporting documentation.	Final Project Status Report, due 6/30/2017

<b>VITLAccess On-Boarding</b>	Contractor shall submit a quarterly list of the providers targeted for initial VITLAccess On-Boarding engagement by two weeks prior to the end of the previous quarter. Once a provider organization has approved VITLAccess on-boarding, they will be change status to Active, from Outreach.	Quarterly
<b>Data Quality</b>	A report detailing all Data Quality Dashboards, Query Capabilities, Reporting Capabilities, and Data Extracts planned or in progress under the scope of this agreement.	Initial Project Status Report
<b>Data Quality</b>	A report detailing all Data Quality Dashboards, Query Capabilities, Reporting Capabilities, and Data Extracts completed each month under the scope of this agreement.	Monthly Project Status Report
<b>Data Quality</b>	A report detailing all Data Quality Dashboards, Query Capabilities, Reporting Capabilities, and Data Extracts completed under the scope of this agreement.	Final Project Status Report, due 6/30/2017
<b>Data Quality</b>	Contractor shall provide the State with written acceptance of the data quality dashboards from a minimum of five participating VHIE contributing health care organizations.	6/30/2017

**8 Dispute Resolution**

In the event of a dispute between the parties, either party may give the Executive Management Team written notice that it desires to invoke the dispute resolution process described herein.

The Party invoking this section shall provide a short and plain statement of the basis for the dispute, in writing, to the other party and to the Executive Management Team.

Within fifteen (15) days of delivery of such notice, the Executive Management Team shall hold a meeting to receive information regarding the reasons for the dispute and review specific proposals for resolution.

If either party concludes that the dispute cannot be resolved in this manner after such meeting, then within twenty (20) days of that meeting, that party may pursue a resolution with the Commissioner of the Department of Vermont Health Access.

**9 Significance of the Use of Federal Monies**

Both parties recognize the significance of the federal funding for these projects. More specifically, both parties recognize the limitations of funding because of the use of federal monies. The State will only reimburse the Contractor for allowable costs under 45 C.F.R. § 75. By signing this agreement, the Contractor is attesting that they have a full comprehension of 45 C.F.R. § 75. Both parties agree to comply with the terms and conditions under 45 C.F.R. § 75.

To protect funds from federal disallowance and recovery from the State or the Contractor, the Contractor promises to comply with the following:

- Work invoiced by the Contractor for the purpose of expending funds against this contract will include only work defined in Attachment A of this agreement.
- The Contractor shall provide written notification to the State upon entering into a contractual relationship for work defined by this Agreement to be performed by the Contractor for another entity.
- The State reserves the right to audit the Contractor to ensure compliance with State and Federal regulations, including the cost allocation methodologies referenced below.
- The Contractor must separate accounting between projects to the extent it has different sources of funding for projects.
- Any work performed outside of the direction of the State will not be reimbursed. The State contact to authorize direct work include is the State's Program Manager referenced on Page 1, Section 7 of this Agreement.

The Contractor is responsible for compliance to any and all other applicable federal regulations or guidelines specific to supporting the funding defined in this agreement. Changes submitted according to Section 4 shall be reviewed for compliance with State and federal law and may be subject to prior approval from State and/or federal regulators.

**10. Independent Review.** Contractor acknowledges and agrees that the State is entitled to have the Department of Information and Innovation review the Contractor's technology for security, privacy and interoperability with State government information technology, consistent with the State's health information plan required by Section 9351 of Title 18 and that during the term of this agreement this review shall be satisfied by obtaining an independent expert review of this Agreement and the services to be rendered hereunder, which review shall recognize previous years' reviews and shall only be triggered by a Material Adverse Change in Contractor's risk profile. The State will hold in reserve funds from this grant a budget up to and not to exceed \$16,750 in State to cover the cost of this Independent Review. Such review may include: (A) an acquisition cost assessment; (B) a technology architecture review; (C) an implementation plan assessment; (D) a cost analysis and a model for benefit analysis, or (E) an impact analysis on net operating costs for the agency carrying out the activity. Upon completion of the review, Contractor shall have the opportunity to review and respond to the independent review prior to the State's final acceptance of the review. Upon the State's request, Contractor shall meet with the State to discuss the results and Contractor will cooperate with the State to address any aspects of the Agreement or services that are identified in the review as the State deems necessary. Contractor acknowledges and agrees that if necessary and as required by the State, the Agreement and/or the applicable Statement(s) of Work will be amended to address the issues identified in the review.

**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 and delivered as specified in Attachment A, or a Business Plan, or a Change Request 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 less frequently than quarterly, and shall include progress or status reports, copies of the deliverables, relevant Change Request, or other information required to show that the work upon which payment is based has been completed. Invoices shall reference this contract number, include date of submission, invoice number, date of service, amount billed for each deliverable or line item and total amount billed, and be signed by the authorized representative of the Contractor. Pending review and approval in accordance with Section 5 of Attachment A, the State will release payment for the Invoice. See Table below for details on the payment provisions.
2. Invoices shall specifically reference the approved Business Plan and the deliverable within the Business Plan that has been completed.
3. The payment table below contains the maximum amount available within each project. If the projects are not completed according to the approved Business Plan, payment shall not be made.

<b>Projects</b>	<b>Deliverable</b>	<b>Payment</b>	<b>Payment Value</b>	<b>Maximum Amount Billable</b>
<b>Interfaces - New Types</b>				
<b>Maximum Amount Payable for this Project</b>				<b>\$147,000.00</b>
<b>VITLAccess On-Boarding</b>				
<b>Maximum Amount Payable for this Project</b>				<b>\$265,000.00</b>
<b>Data Quality</b>				
<b>Maximum Amount Payable for this Project</b>				<b>\$596,245.00</b>
<b>Total Contract Value</b>				<b>\$1,008,245.00</b>

4. Invoices and any required reports shall reference this contract number and be submitted electronically to:  
 Meaghan Kelley: [Meaghan.Kelley@vermont.gov](mailto:Meaghan.Kelley@vermont.gov)
5. No benefits or insurance will be reimbursed by the State.
6. The total maximum amount payable under this contract shall not exceed \$1,008,245.

5. In the event that a Progress Report or deliverable is not submitted to the State or that a Progress Report or deliverable has gone through all remediation steps as described in Sections 6 and 8 of Attachment A and has been escalated to the EMT with the resolution that the Progress Report or deliverable is not accepted by the State, the State shall not release payment for the Progress Report or deliverable. If the EMT decides to allow the Contractor to resubmit at a later date, the Contractor will not receive payment until the Progress Report or deliverable is approved by the State and an invoice is received in accordance with this Attachment B.
  
7. For situations in which payment may be reduced, such reductions shall not be made to the extent that the failure of the Contractor's performance can be attributed to:
  - Unforeseeable catastrophic events experienced at the Contractor's local and corporate facilities; or
  - Unforeseeable catastrophic events experienced by State which has a material effect on the Contractor

**ATTACHMENT C**  
**STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS**  
**REVISED JULY 1, 2016**

**1. 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. “Agreement” shall mean the specific contract or grant to which this form is attached.

**2. 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.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

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

**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. 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 State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party’s indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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 in connection with the performance of this Agreement.

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 or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

**8. 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. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this 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 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*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 \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with the Contract, including but not limited to bills, invoices, progress reports and other proofs of work.

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. 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.

**B. Internal Controls:** In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

**C. Mandatory Disclosures:** In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**13. 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.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.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.

**15. 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.

**16. 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.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only 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.

**19. 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 shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything 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.

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. 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>

**23. 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.

**24. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**25. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**26. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially

fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**27. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- A. Non-Appropriation:** 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.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**29. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**30. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**31. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**32. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

(End of Standard Provisions)

**ATTACHMENT D**  
**INFORMATION TECHNOLOGY PROFESSIONAL SERVICES**  
**TERMS AND CONDITIONS**

**1. OWNERSHIP AND LICENSE IN DELIVERABLES**

**1.1 Contractor Intellectual Property.** Contractor shall retain all right, title and interest in and to any work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements and any other intellectual property, tangible or intangible, that has been created by Contractor prior to entering into this Contract (“Contractor Intellectual Property”). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the items that Contractor is required to deliver to the State under this Contract, including Work Product (“Deliverables”), the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to use any such Contractor Intellectual Property that is incorporated into Work Product.

**1.2 State Intellectual Property.** The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, “State Intellectual Property”).

Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

**1.3 Work Product.** All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein.

“Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship, specifications, operating instructions, procedures manuals or other documentation, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely

or jointly with others, pursuant to this Contract. Work Product does not include Contractor Intellectual Property or third party intellectual property.

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State's internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State's obligations with respect to Confidential Information, authorize others to do the same on the State's behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

The Contractor shall not sell or copyright a Deliverable 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 Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

## **2. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING**

**2.1** For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party's possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

**2.2 Confidentiality of Contractor Information.** The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

**2.2 Confidentiality of State Information.** In performance of this Contract, and any exhibit or schedule hereunder, the Party acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq ("State Data"). In addition to the provisions of this Section, the Contractor shall comply with the requirements set forth in the State's HIPAA Business Associate Agreement attached hereto as Attachment E. Before receiving or controlling State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State.

State Data shall not be stored, accessed from, or transferred to any location outside the United States.

The Contractor agrees that (a) it will use the State Data only as may be necessary in the course of performing duties or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information; (c) it will not publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State and that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the State's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract.

Contractor shall not access State user accounts or State Data, except in the course of data center operations, response to service or technical issues, as required by the express terms of this Contract, or at State's written request.

Contractor may not share State Data with its parent company or other affiliate without State's express written consent.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

### 3. SECURITY OF STATE INFORMATION.

**3.1 Security Standards.** To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

**3.2 Security Breach Notice and Reporting.** The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a "Security Breach"), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or, if applicable, Vermont Department of Financial Regulation ("DFR"), within fourteen (14) business days of the Contractor's discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor's subcontractors, affiliates or agents which may be "data collectors" hereunder.

The Contractor agrees to fully cooperate with the State and assume responsibility at its own expense for the following, to be determined in the sole discretion of the State: (i) notice to affected consumers if the State determines it to be appropriate under the circumstances of any particular Security Breach, in a form recommended by the AGO; and (ii) investigation and remediation associated with a Security Breach, including but not limited to, outside investigation, forensics, counsel, crisis management and credit monitoring, in the sole determination of the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification.

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

#### **4. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

**4.1 General Representations and Warranties.** The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no pending litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the services as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the services or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

**4.2 Contractor's Performance Warranties.** Contractor represents and warrants to the State that:

- (i) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (ii) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the

operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

- (iii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

## **5. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE**

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$2,000,000 per claim, \$4,000,000 aggregate. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, Contractor shall maintain first party Breach Notification Coverage of not less than \$3,000,000.

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

With respect to the first party Breach Notification Coverage, Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Contract.

## **6. REMEDIES FOR DEFAULT**

In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

## **7. TERMINATION**

**7.1** Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom State Data, State Intellectual Property or other State information and materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting any and all State data, in a format usable without the use of the Services and as agreed to by State, at no additional cost. Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

If the State determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Contractor and the State shall mutually prepare a Transition Plan identifying transition services to be provided.

**7.2 Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to State all State Intellectual Property and State Data (including without limitation any Deliverables for which State has made payment in whole or in part), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.

**8. DESTRUCTION OF STATE DATA**

At any time during the term of this Contract within thirty days of (i) the State's written request or (ii) termination or expiration of this Contract for any reason, Contractor shall securely dispose of all copies, whether in written, electronic or other form or media, of State Data according to National Institute of Standards and Technology (NIST) approved methods, and certify in writing to the State that such State Data has been disposed of securely. Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location according to National Institute of Standards and Technology (NIST) approved methods and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.

**APPROVAL:**

 e-Signed by Jared Bianchi

on 2016-11-22 18:08:40 GMT

ASSISTANT ATTORNEY GENERAL

DATE: November 22, 2016

**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 Vermont Information Technology Leaders (“Business Associate”) as of July 1, 2016 (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

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 18.8.

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. 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 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.

(Rev: 5/5/15)

**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.

**Appendix I – Required Forms**

**Department of Vermont Health Access  
Subcontractor Compliance**

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

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

Subcontractor Name: \_\_\_\_\_ Dollar Amount: \_\_\_\_\_

Scope of Subcontracted Services:

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

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

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

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

In accordance with State Standard Contract Provisions (Attachment C), The State may set off any sums which the subcontractor owes the State against any sums due the Vendor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in Attachment C.

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

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

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

**Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21 V.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.

**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.

**Taxes Due to the State:**

- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**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.

**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.

## BUSINESS PLAN

<b>Project Name:</b>		<b>Version</b>	
		<b>Date:</b>	

### Organization

Key Roles	Name	Role
Executive Sponsor		Provides executive direction and resources, if necessary.
Business Unit Leader		Coordinates and leads activities impacting the business area.
State Partners		Approves Business Plan. Meets routinely to review status. Approves scope of work changes. Tracks budget.
Key Team Contributors	Name	Role

**Problem Statement:** (What specific issues are being addressed? Why?)

**Proposed Solution:** (How will the problem be solved?)

### Scope of Work:

- **Objectives:** (From the problem statement, please list the objectives that this proposal will address.)
- **Stakeholders:** (Who are the key people or organizations that will be impacted by this proposal?)
- **Scope Exclusions:** (What specific items are considered outside the scope of this proposal?)
- **Risks:** (Please describe any issues or risks associated with this proposal.)

**Schedule:** (In this table, a schedule is defined for project activities. It can come from the project work breakdown.)

Key Project Milestones and Critical Dates	Estimated Start Date	Estimated Completion Date

**Reports:** (This table defines the progress reporting requirements submitted to the State for the project.)

Project:	Report Metrics:	Frequency:

**Cost and Funding:** (Please provide a cost breakdown for the proposed solution that identifies funding sources and includes staffing, maintenance and operations costs projected for 3 years.)

Cost Type:	Funding Source:	Duration:	Value:

**Deliverables, Verification and Invoice:** (This is the table that defines what deliverables can be invoiced against the applicable contract. All project expenses exclusive of ongoing maintenance and operations should be defined here)

Major Deliverables:	Outcome Measure:	Invoice Amount:	Invoice Date:

**Approvals:** (This table must be completed with signatures before any work can begin)

Role:	Signature:	Approval:	Date:
Contractor CEO			
State Authorized Representative			
State Fiscal Agent			

## PROJECT CHANGE REQUEST FORM

In accordance with Attachment A, Section E.3.ii, Change Management Process, this Project Change Request Form will be used by the Executive Management Team (EMT) to review and approve changes to the budget, schedule, or scope of work of this Agreement. To the extent that budget increases or significant scope changes would be required, those changes would be subject to a formal amendment to this Agreement executed by VITL and the State Department of Vermont Health Access (DVHA). This document must be signed by both parties before being considered in effect.

Change Request Name:	Date submitted:	Priority: H M L
Requested by:	Assessed by:	
Change Request ID:		

Detail (Description of Proposed Change):

Reason for Change (Benefits):

Implications of Not Making This Change:

### CHANGE REQUEST ASSESSMENT

Scope Impact:
Schedule Impact:
Budget Impact:
Other Implications:
Overall Assessment/Recommendation:

Requires Amendment to Agreement:  YES  NO

### SIGNATURES:

<b>State HIE Program Director:</b>	<i>Approval:</i>	<i>Date:</i>
<b>CEO, VITL:</b>	<i>Approval:</i>	<i>Date:</i>
<b>State Fiscal Agent:</b>	<i>Approval:</i>	<i>Date:</i>

Explain if Disapproved: