

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Westaff (USA), Inc., a California corporation (hereafter called "Contractor"), a wholly-owned subsidiary of Koosharem LLC, a California limited liability company with a principal place of business in Santa Barbara, CA. The Contractor's form of business organization is a Corporation. The Contractor's local address is 74 Main Street, 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 temporary clerical services. Detailed services to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$100,000.00
4. **Contract Term.** The period of Contractor's performance shall begin on September 13, 2014 and end on September 12, 2015. This contract may be renewed for an additional two (2), one (1) year terms beyond the original term of this contracts as agreed by both parties.
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 not required.
6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 30 days in advance. Notwithstanding this provision, if a governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this contract are provided, is not in compliance with State and Federal law or is operating with deficiencies the State may terminate this contract immediately and notify the Contractor accordingly. Also, in the event that federal funds supporting this contract become unavailable or are reduced, the State may suspend or cancel this contract immediately with no obligation to pay the Contractor from State revenues.
8. **Attachments.** This contract consists of 41 pages including the following attachments, which are incorporated herein:
  - Attachment A - Specifications of Work to be Performed
  - Attachment B - Payment Provisions
  - Attachment C - Customary State Contract provisions
  - Attachment D - Modifications of Customary Provisions
  - Attachment E - Business Associate Agreement
  - Attachment F - Customary Contract Provisions of the Agency of Human Services
  - Attachment G - Job Descriptions
  - Attachment H - Business Partner Agreement

Appendix I – Required Forms

The order of precedence of documents shall be as follows:

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

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

**BY THE STATE OF VERMONT:**

**BY THE CONTRACTOR:**

E-SIGNED by Mark Larson  
on 2014-09-17 16:47:04 GMT

September 17, 2014

MARK LARSON, COMMISSIONER                      DATE  
DEPARTMENT OF VERMONT HEALTH ACCESS  
312 HURRICANE LANE  
WILLISTON, VT 05495  
MARK.LARSON@STATE.VT.US  
802-879-5952

E-SIGNED by James Mount  
on 2014-09-17 16:42:58 GMT

September 17, 2014

JAMES MOUNT, FRANCHISE OWNER                      DATE  
WESTAFF (USA), INC.  
74 MAIN STREET  
BURLINGTON, VT 05401  
JMOUNT@WESTAFF.COM  
802-862-6500

**ATTACHMENT A  
SPECIFICATIONS OF WORK TO BE PERFORMED**

**Scope:**

The Contractor shall provide a staffing solution to the State on an as-needed basis. The Contractor will be paid as services are provided and billed.

At the time the State requests a staffing solution from the Contractor, the State will provide the Contractor with an estimate, based on the State's available knowledge, of the approximate period of time for which the State will need the requested staffing solution.

The Contractor's staffing solution shall include following positions: Administrative Assistant A, Administrative Assistant B, Clerk C, Program Services Clerk, and VHC Support Services Clerk. The description of services is located in Attachment G of this contract. State will not require temporary personnel to perform any duties beyond those that are called for in such descriptions and will promptly notify Contractor in the event that there is any material change in the terms and conditions of an associate's temporary employment or job duties.

The State may offer part time or full time employment to temporary employees assigned to the State under this agreement. No temporary employee shall be assigned to the State under this agreement for more than 90 days absent approval from the Secretary of Administration.

**Training:**

The State will provide specific training, day-to-day supervision and any necessary equipment for temporary employees assigned to the State under this agreement as needed. The Contractor will provide generic reference manuals and/or support for clerical staff, as requested by the State. Examples of the Contractor's training and support include, but are not limited to: providing PC support, word processing training, answering questions, etc.

**Satisfaction Guarantee:**

The Contractor agrees to abide by its "Satisfaction Guarantee", which states: "If at any time during the first 3 business days for full-time assignments, or 5 business days for part-time assignments, an employee assigned to the State is determined to not possess the minimum requirements for the position, the employee will be removed or replaced without charge for hours worked".

**Quality Controls:**

The Contractor will provide quality-control calls periodically during the assignment to ensure that the assigned employee is performing to the State's expectations. The Contractor shall call the person who initiated that particular staffing need. This contact will vary on a case by case basis. If the employee is not meeting the State's expectation, the Contractor will take steps to remedy the situation immediately. Within twenty-four (24) hours of notice from the State, the Contractor will counsel the employee, replace the employee, or remove the employee from the assignment and issue a credit in accordance with the "Satisfaction Guarantee".

**Renewal:**

This agreement has the option to be renewed twice via one-year extensions. Renewal of this award by the State is contingent upon the Contractor's satisfactory performance of the scope of work, timely response to requests for service by the State, and adherence to the "Satisfaction Guarantee".

**Security:**

State employees, whether temporary or permanent, are responsible for the security of State computers, software, and records in their positions. As a condition of employment with the State, every employee, temporary or

permanent, must agree to adhere to the most current Department of Information and Innovation policies listed below – which can be found at: [http://dii.vermont.gov/Policy\\_Central](http://dii.vermont.gov/Policy_Central)

Office Technology Section:

- Acceptable Use Policy (Department of Human Resources – Policy & Procedure Manual, Section 11.7)
- System/Service Password Policy
- User Password Policy and Guidelines

Any violation of these policies may result in disciplinary action, up to and including dismissal. Contractor agrees to have clerical staff sign a statement (Appendix I) verifying that they have reviewed these policies and agree to adhere to them. A copy of this statement must be sent to the appropriate State contact who has requested the employee, and a copy must be kept on file with the Contractor.

**Screening:**

Criminal History Check

Through the use of a third party vendor, the Contractor shall perform a search of each county and/or federal jurisdiction identified by the Social Security Number trace. Results shall be available online in 1-3 business days (average standard is less than 2 days) based on number of jurisdictions to be searched, accessibility to the specific records and if additional research is required on records that are located. Contractor shall review results to ensure compliance with the hiring criteria.

Credit Check

Contractor shall perform a national seven-year history credit check search.

Department of Motor Vehicle (DMV) Check

Upon request of the State contractor shall perform a three-year DMV check for the State of legal residence.

Screening	Cost
Criminal History	\$25.00
Credit Check	\$5.00
DMV Check	Actual Cost – No mark up
Education Check	\$7.00/degree

**Request for Approval to Subcontract:**

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

Meaghan Kelley, Contracts and Grants Administrator  
Department of Vermont Health Access  
312 Hurricane Lane  
Williston, VT 05495  
[Meaghan.Kelley@state.vt.us](mailto:Meaghan.Kelley@state.vt.us)

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

**Contractor Pay Rates:**

The Contractor shall pay its employees according to the pay rates set forth in Attachment B.

**Time Sheet Approval**

The Contractor's assigned employee will email weekly timesheets in PDF format to assigned State supervisor. To aid in the production of accurate invoices, time sheets will be filtered through the following quality checks:

1. State supervisor approves time sheet;
2. Approved time sheet data will be downloaded into the Contractor's pay system and processed according to the pay rates set forth in Attachment B;

Contractor will generate reports to compare and validate the invoice to the information received through its pay system.

**Other Temporary Service Requests**

The Contractor will provide the State with additional staffing needs as requested by the State. The State shall utilize the attached Other Temporary Service Request Form for services that are not included in the contract. After the Contractor and State have agreed upon a work plan, pay rate, and position description both parties must approve and sign the form. The State will not pay for work performed by the Contractor unless the work has been previously approved through a services request form. Contractor shall wait for approval from the State prior to commencing work.

Contract Administrator:

Meaghan Kelley, Grants Management Administrator  
Department of Vermont Health Access  
312 Hurricane Lane  
Williston, VT 054945  
[Meaghan.Kelley@state.vt.us](mailto:Meaghan.Kelley@state.vt.us)

Programmatic Contract Manager:

Valerie Nikel, Administrative Services Manager  
Department of Vermont Health Access  
289 Hurricane Lane  
Williston, VT 05495  
[Valerie.Nikel@state.vt.us](mailto:Valerie.Nikel@state.vt.us)

**ATTACHMENT B  
 PAYMENT PROVISIONS**

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

1. The State shall pay the Contractor an amount not to exceed \$100,000 for actual hours worked or screenings performed under this agreement.
2. The State shall pay the Contractor, and the Contractor shall pay its employees, at the rates set forth below:

Position Title	Hourly Pay Rate Range	Hourly Bill Rate Range
Administrative Asst.	\$15.00 - \$16.50	\$21.00 - \$23.10
Clerk C	\$12.00 - \$12.50	\$16.80 - \$17.50
Program Services Clerk	\$13.00 - \$13.50	\$18.20 - \$18.90
VHC Support Specialist	\$17.50 - \$18.50	\$24.50 - \$25.90

Screening Services	Cost
Criminal History	\$25.00
Credit Check	\$5.00
DMV Check	Actual Cost – No mark up
Education Check	\$7.00/degree

3. If the State decides to extend full time or part time employment to any Contractor associate while assigned, or within 6 months of having been assigned, the State agrees to pay a Placement Fee based upon the conversion of a temporary employee to full time or part time employment. The conversion table is the following:

# Calendar Days Employee is Assigned to State	Fee % of Annual Salary
< 30	10% of annual salary
31-60 days	8% of annual salary
61-90 days	6% of annual salary
> 90 days	\$300

4. The State agrees to discuss renegotiating the rate to be paid for an individual if later tasks differ from what was initially agreed upon or adjustments need to be made due to increase in tax, benefits, and other costs. Notification of proposed rate changes must be provided by the Contractor to the State during the work term of the individual. No rate change will occur unless reduced to writing and signed by both parties as an amendment to this agreement.
5. No benefits or insurance will be reimbursed by the State.

6. In the event that federal funds supporting this contract become unavailable or are reduced, the State may suspend or cancel this contract immediately. The State shall pay for approved services under this contract accordance with Attachment A and B, up until the date of cancellation.
7. As requested by the State, the Contractor may submit revised invoices for payment.
8. On a weekly basis, the Contractor will submit to the State an electronic bill or invoice for each temporary person employed by the Contractor under this agreement. Each bill will identify the individual who performed the services, identify their site location, state the number of hours worked, state the amount due, reference this contract number, and state the date of submittal. The State must approve the bill or invoice in a commercially reasonable manner before it will be forwarded for payment. The bill or invoice shall be submitted to:

Meaghan Kelley  
[Meaghan.Kelley@state.vt.us](mailto:Meaghan.Kelley@state.vt.us)  
Business Office, Grants Management Specialist

**ATTACHMENT C  
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS**

1. **Entire Agreement.** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law.** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If appropriations are insufficient to support this Agreement, the State may cancel on a date agreed to by the parties or upon the expiration or reduction of existing appropriation authority. In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to fund this Agreement from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

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

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

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

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

**Workers Compensation:** With respect to all operations performed, the Party shall carry workers'

compensation insurance in accordance with the laws of the State of Vermont.

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

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

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

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

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

**Automotive Liability:** The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: **\$500,000** combined single limit.

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

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

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

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

10. **Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at

reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

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

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

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

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

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

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

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

**15. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of 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.

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

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

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

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**19. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

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

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

The following language is hereby deleted:

\$ 50,000 Fire/ Legal/Liability

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

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

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

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

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

**Section 14 does not apply to this contract:**

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

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

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

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

**Section 5 does not apply to this contract:**

**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.*

**4. Reasons for Modifications:**

These provisions do not apply to this agreement.

**APPROVAL:**

 E-SIGNED by Ben Battles  
on 2014-09-16 21:02:49 GMT

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

DATE: September 16, 2014

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

**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 Westaff (USA), Inc (“Business Associate”) as of September 13, 2014 (“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

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

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

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

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

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

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

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

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

**14. Termination.**

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

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

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

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

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

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

**17. Security Rule Obligations.** The following provisions of this section apply to the extent that Business

Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

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

17.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

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

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

## **18. 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: 9/21/13)

## 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.

STATE OF VERMONT, CONTRACT FOR PERSONAL SERVICES  
DEPARTMENT OF VERMONT HEALTH ACCESS  
WESTAFF (USA), INC  
*Attachment F - Revised AHS -12/10/10*

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## Attachment G - Job Descriptions

### Administrative Assistant A

**Class Definition:** Administrative work as an assistant to a manager, unit or program chief, or with direct responsibility for a specific assigned program or function. While actual duties may vary, positions in this class are characterized by work in a technical or specialized field, decision making with little concurrent supervisory review, and accountability for results. The role differs from higher level administrative assistants by a more limited program or functional area, and less impact upon total department activities. Assignments may generally be characterized as a first level administrative role with clearly indicated functional and authority dimensions. Assigned duties may include employee supervision. Work is performed under the direction of an administrative superior.

**Examples of Work:** As delegated, may perform assigned tasks of a technical nature requiring independent action and full accountability for program results. Examples include but are not limited to support services such as budget, personnel, purchasing or space and communications needs for a director or program administrator; administering a service application procedure requiring analysis of data and an approval or disapproval decision; receiving requests and complaints from consumers and taking substantive action(s) to resolve or alleviate the problem; and serving as coordinator of various support services at a department or institutional level. Performs related work as required.

**Environmental Factors:** Duties are typically performed in an office setting with normal working conditions, some of which may be within an institutional environment. Depending upon duties assigned, some travel may be necessary, for which private transportation may be needed.

#### *Minimum Qualifications:*

**Knowledge, Skills and Abilities:** Working knowledge of the principles and practices of public administration.

- Working knowledge of modern office management methods.
- Awareness of supervisory principles and practices.
- Ability to interpret and apply statutes and regulations of considerable complexity.
- Ability to work independently in difficult and complex tasks.
- Ability to communicate effectively orally and in writing.
- Ability to prepare and deliver clear oral and written reports.
- Ability to establish and maintain effective working relationships.

**Education and Experience:** Associate's degree in business technology, secretarial science or office management; OR High school graduation or equivalent and three years of office clerical experience. Completion of a one-year vocational/technical training program in business and office occupations or related area may be substituted for one year of the work experience. College coursework may be substituted for the work experience on a semester for six months basis.

### Administrative Assistant B

**Class Definition:** Complex administrative work as an assistant to a department or division manager. Positions in this class differ from lower level administrative assistants in amount of authority and accountability for work performed, leeway for independent action and functioning for the position's supervisor in that person's absence. Assigned duties are generally of a more complex technical/professional level. Where clerical or secretarial duties exist, class incumbents generally have substantial supervisory duties. Work is performed under the supervision of an administrative superior, but with need for significant interaction with other division or department staff, and outside service providers.

**Examples of Work:** Personally plans and directs or assists in the administrative activities of a moderate or large sized agency, institution unit, or division. May serve as administrative officer to a state department. May plan, assign, and review the work of subordinate technical and clerical staff. Reviews office and field operating procedures and policies; recommends improvements where appropriate. May personally perform office management; mail and switchboard services; forms design and reproduction; purchasing; and other duties as assigned. Prepares various statistical, financial and special reports. Where applicable, performs complex technical and professional tasks such as liaison with data processing staff, operations manuals, and others. Performs related work as required.

**Environmental Factors:** Duties are performed predominately in an office setting. Private means of travel should be available for occasional travel when appropriate. Incumbents must be adaptable and able to work within tight time limits and under considerable stress. Some evening and weekend duty may be necessary.

***Minimum Qualifications:***

- Knowledge, Skills and Abilities: Knowledge of the principles and practices of public administration.
- Knowledge of modern office management methods.
- Working knowledge of the principles and practices of governmental accounting and personnel administration.
- Working knowledge of computer capabilities and related information systems.
- Ability to develop and install administrative procedures and operations and to evaluate their effectiveness.
- Ability to exercise judgment and discretion in applying and interpreting policies, rules, and regulations.
- Ability to plan, implement, and coordinate administrative activities.
- Ability to conduct research and prepare written and oral reports.
- Ability to communicate effectively orally and in writing.
- Ability to establish and maintain effective relationships.

**Education and Experience:** Bachelor's degree; OR Associate's degree and one year providing administrative-level duties for a project, program, or operation; OR High school graduation or equivalent and two years performing administrative-level duties for a project, program, or operation. Administrative duties are those beyond general clerical or secretarial, such as interpretation of laws, rules and regulations; data collection and analysis; managing support services; and implementing program policies and procedures.

**Clerk C**

**Class Definition:** Advanced clerical work performing a wide variety of clerical operations or a highly specialized clerical function. Work may also involve assisting an administrative superior by relieving him of some routine administrative details. Employees in this class are responsible for making independent operating decisions based upon experience and knowledge of departmental operations, although advice and procedural standards are usually available in difficult cases. Technical or policy problems and changes in procedures are discussed with administrative officials and made subject to their approval. Supervision is received through personal conferences, general observations of work in progress, and the review of completed work and reports by a supervisor. Supervision may be exercised over clerical employees performing intermediate level clerical functions.

**Examples of Work:** Responsible for clerical operations involving maintenance of a variety of office systems and accounts. Processes fiscal, personnel, educational, retirement, registration, tax returns or other department records, making coding, processing, approval, and other pertinent decisions in carrying forward a program activity. Prepares statistics used in carrying out departmental functions and services. Works with clerical staff.

Coordinates the work involved in preparing established personnel, administrative and financial reports. Prepares special studies or summaries where assimilation and analysis of statistics or data is required. May supply information on department policies, procedures and regulations of varying complexity. May assist in budget preparation and policy and procedures formulation. May relieve superior of minor administrative details. Performs related work as required.

**Environmental Factors:** Work is usually performed in a normal office setting. Incumbents must be able to concentrate on details and perform accurate work in the face of frequent interruptions. Human relations skills may be needed to deal with the general public. Pressure from work deadline is predictable.

***Minimum Qualifications:***

- Considerable knowledge of modern office practice, procedures and equipment.
- Considerable knowledge of business English, spelling, and arithmetic.
- Considerable knowledge of the principles of office management and supervision.
- Considerable knowledge of standard procedures for record maintenance.
- Working knowledge of the capabilities of computers in processing forms and maintaining record systems.
- Ability to interpret regulations, policies and procedures of significant complexity.
- Ability to understand and follow complex oral and written directions.
- Ability to develop, layout and install clerical procedures from general instructions.
- Ability to establish and maintain effective working relationships.

**Education and Experience:** High school graduation or equivalent and two years of office clerical experience. Completion of a one-year vocational/technical training program in business and office occupations or related area may be substituted for one year of the work experience. College coursework may be substituted for the work experience on a semester for six months basis.

**Program Services Clerk**

**Class Definition:** Advanced, specialized clerical work involving the implementation of specific aspects of programs within a division or department. This class is distinguished from lower level clerical classes by a requirement for significant technical and program knowledge and from higher administrative classes by the presence of more detailed procedural guidelines and by a limitation to narrower program activities. Positions generally require significant interaction with the general public, service providers, or other agencies and departments. Work is performed under the supervision of a technical or administrative superior.

**Examples of Work:** Provides clerical support requiring significant knowledge of technical program rules, regulations, and requirements. Provides information on licensing or permitting requirements and procedures or on programs administered by the assigned division. Reviews applications, submissions and other documents for adherence to technical and regulatory requirements. May approve submissions under definite guidelines or refer for review by higher authority. Performs follow up to obtain or provide necessary information. Performs a variety of office management functions such as ordering supplies, collecting and reviewing time and expense reports, and reviewing and processing invoices. Maintains staff schedule and routes requests for services or information to appropriate personnel. Assists supervisor in planning and implementing office policies and procedures and coordinating training events, conferences, and meetings. May be responsible for the assembly and production of reports and summaries of considerable complexity. May monitor review processes for adherence to deadlines and approval procedures. May operate and monitor a variety of office and/or communications equipment. Maintains program manuals and records. Performs related duties as required.

**Environmental Factors:** Duties are performed primarily in a standard office setting but occasional travel may be required, for which private means of transportation must be available.

Considerable interaction with clients and the general public may be anticipated. Some pressure from deadlines may occur.

***Minimum Qualifications:***

- Considerable knowledge of English grammar, spelling and punctuation.
- Considerable knowledge of office practices, procedures and equipment.
- Knowledge of word processing and data processing programs.
- Awareness of the principles and practices of public administration.
- Ability to interpret and apply statutes and regulations of moderate complexity.
- Ability to understand and follow complex instructions.
- Ability to establish and maintain effective working relationships.
- Ability to communicate effectively.

**Education and Experience:** High school graduation or equivalent and two years of office clerical experience. Completion of a one-year vocational/technical training program in business and office occupations or related area may be substituted for one year of the work experience. College coursework may be substituted for the work experience on a semester for six months basis.

**VHC Support Services Clerk**

**Class Definition:** Duties involve interaction with beneficiaries, private insurers, employees and employers. Work is performed under the general direction of the Vermont Health Connect Support Services Manager. All employees of the Agency of Human Services perform their respective functions adhering to four key practices: customer service, holistic service, strengths-based relationships and results orientation.

**Examples of Work:** Interaction with beneficiaries, employees and employers addressing inquiries related to enrollment, disenrollment and complaints. Provide front-line telephone support employees and employers during the enrollment phase with VHC. May provide referrals to other programs. Work closely with Benefit Program Specialists, IT staff, Department of Vermont Health Access staff and other contractors as needed to assess and fix errors. Assist beneficiaries in need of transitioning to the appropriate programs within Vermont Health Connect. Data entry of paper applications for employer groups as well as employees. Maintain effective control of caseload to assure prompt processing of all case actions

As part of the Vermont Health Connect Support Services Unit, this position will be part of a team that will assist with transitioning the small group market to Vermont Health Connect. Assist individuals and small business owners who will be purchasing their health insurance through Vermont Health Connect. This will require coordination with other departments and insurance companies to ensure that individuals are seamlessly transitioned between coverage programs if their eligibility changes.

Environmental Factors:

Duties are performed in an office setting. Workload usually heavy with constant need for prompt, accurate decisions.

***Minimum Qualifications:***

- Ability to handle sensitive and confidential situations; compliance with HIPPA guidelines.

- Ability to function effectively in a fast-paced environment and maintain consistent responses.
- Knowledge of health insurance benefit packages.
- Good organization, customer service skills and communication skills.
- Knowledge of and ability to apply basic computer skills.
- Ability to establish and maintain effective working relationships.
- Ability to perform job duties within the framework of the four key practices of the Agency of Human Services: customer service, holistic service, strengths-based relationships and results orientation.

**Education and Experience:** Associate's degree and four years performing administrative level duties in a health care, employment and training, or government setting;

OR

High School diploma or equivalent and six years' work experience as described above.

Special Note: Preference will be given to applicants with health care claims experience or experience in explaining health care benefits to employees or clients.

**ATTACHMENT H  
BUSINESS PARTNER AGREEMENT**

This Business Partner Agreement (“Agreement”) is entered into by and between **the State of Vermont, Agency of Human Services operating by and through its Department of Vermont Health Access (“DVHA”) and Westaff (USA), Inc.** (“Business Partner”) as of July 15, 2014 (“Effective Date”). This Agreement supplements and is made a part of the Contract to which it is attached.

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

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

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

2. **Authorized Uses/Disclosures of PII**

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

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

**3. Privacy Requirements**

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

**4. Security Safeguard Requirements**

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

**5. Documenting and Reporting Breaches**

Business Partner shall report to DVHA any Breach of PII as soon as it (or any of its employees or agents) becomes aware of such Breach, and in no case later than three (3) business days after it (or any of its employees or agents) become aware of the Breach. If DVHA determines that a Breach of PII occurred for which one of Business Partner's employees or agents was responsible, upon its request, Business Partner shall provide notice to the individual(s) whose PII was the subject of the Breach. When requested to provide notice, Business Partner shall consult with DVHA about the timeliness, content and method of notice, and shall receive DVHA's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Partner.

**6. Mitigation and Corrective Action Requirements**

Business Partner shall mitigate, to the extent practicable, any harmful effect that is known to it of a Breach of PII. Business Partner shall draft and carry out a plan of corrective action to address any incident of impermissible collection, use or disclosure of PII, subject to DVHA's prior review and written approval.

**7. Requirements for Agreements with Third Parties**

Business Partner may only disclose PII to its agents, including subcontractors, for the purposes authorized by this Agreement. Business Partner shall ensure that any agent (including any subcontractor) to whom it provides PII received from DVHA or created or received by Business Partner on behalf of DVHA agrees in a written agreement to the same PII restrictions and conditions that apply through this Agreement to Business Partner. Business Partner must enter into the written agreement and obtain the prior written consent of DVHA before any use or disclosure of PII to such agent. The written agreement must identify DVHA as a direct and intended third party beneficiary with the right to enforce any Breach of the agreement concerning the use or disclosure of PII. Business Partner shall provide a copy of the signed agreement to DVHA upon request.

**8. Termination**

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

## 9. Responsibility for the Return/Destruction of PII

- 9.1 Business Partner, in connection with the expiration or termination of the Contract, shall return or destroy, at the discretion of DVHA, all PII received from DVHA or created or received by Business Partner on behalf of DVHA pursuant to the Contract that Business Partner still maintains within thirty (30) days after such expiration or termination. Business Partner shall not retain any copies of the PII. Within the thirty (30) day period, Business Partner shall certify in writing to DVHA that (1) all PII has been returned or destroyed, and (2) Business Partner does not continue to maintain any PII.
- 9.2 Business Partner shall provide to DVHA notification of any conditions that Business Partner believes make the return or destruction of PII infeasible. If DVHA agrees that return or destruction is infeasible, Business Partner shall extend the protections of this Agreement to such PII and limit further uses and disclosures of such PII to those conditions that make the return or destruction infeasible for so long as Business Partner maintains such PII.

## 10. Penalties

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

## 11. Training

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

## 12. Miscellaneous

- 12.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract, the terms of this Agreement shall govern with respect to its subject matter. Otherwise the terms of the Contract continue in effect.
- 12.2 Business Partner shall cooperate with DVHA to amend this Agreement from time to time as is necessary for DVHA to comply with 45 CFR §155.260 or any other standards promulgated under the ACA.
- 12.3 Any ambiguity in this Agreement shall be resolved to permit DVHA to comply with 45 CFR

§155.260, or any other standards promulgated under the ACA.

- 12.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., the ACA) in construing the meaning and effect of this Agreement.
- 12.5 As between Business Partner and DVHA, DVHA owns all PII provided by DVHA to Business Partner or created or received by Business Partner on behalf of DVHA.
- 12.6 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement.

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

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

13. **General Services; Performance** In performance of this Contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:
  - 13.1 All work will be performed under the general direction of the contractor or the contractor's responsible employees.
  - 13.2 Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.
  - 13.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
  - 13.4 No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.
  - 13.5 The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
  - 13.6 DVHA will have the right to void the Contract if the contractor fails to provide the safeguards described above.

**14. General Services; Criminal/Civil Sanctions**

- 14.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further

disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

14.2 Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such Person shall also notify such officer and employee that such authorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

14.3 Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

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

15. **General Services; Inspection** The IRS and DVHA shall have the right to send its officers and employees

into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

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

16.1 All work will be done under the supervision of the contractor or the contractor's employees.

16.2 Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.

16.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

16.4 The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

16.5 Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

16.6 All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.

16.7 No work involving FTI furnished under this Contract will be subcontracted without prior written approval of the IRS.

**17. Technology Services; Criminal/Civil Sanctions**

17.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer

and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

17.2 Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such Person shall also notify such officer and employee that such authorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

17.3 Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

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

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

(Rev:8/2/13)

**Appendix I – Required Forms  
Department of Vermont Health Access  
Request for Approval to Subcontract**

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

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

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

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

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

DVHA Contact Person:	_____	Signature:	_____
Phone Number:	_____		

Business Office Review

Comments: \_\_\_\_\_

Approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

**14. 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.

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

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

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

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

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

**21. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

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

**Department of Information and Innovation (DII) Policy Central Document Attestation**

This attestation confirms that the undersigned employee assigned to work under Contract #26994, between the State of Vermont's Department of Vermont Health Access and Westaff (USA) Inc., has read and agrees to the terms outlined in the following documents located at: [http://dii.vermont.gov/Policy\\_Central](http://dii.vermont.gov/Policy_Central)

- Acceptable Use Policy (Department of Human Resources – Policy & Procedure Manual, Section 11.7)
- System/Service Password Policy
- User Password Policy and Guidelines

This attestation also confirms that the undersigned employee assigned to work under this contract is aware that any violation of these policies may result in disciplinary action, up to and including dismissal. Westaff must submit this signed form to the State contact who requested staffing services. Westaff must also retain a copy of this signed form on file for the duration of Contract #26994.

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**Name of Westaff Employee:**

**Date:**

**Westaff Manager:**

**Date:**

**Other Temporary Service Request Form [numbered consecutively]**

<b>Position Title:</b>			
<b>Hourly Bill Rate:</b>		<b>Hourly Pay Rate:</b>	<b>Contract #26994</b>
<b>Duration of Services:</b>			

**1. Position Description**

**2. Work Plan & Expected Outcomes**

<b>Westaff</b>	James Mount	
<b>Approval Signature</b>		Date
<b>DVHA Business Lead:</b>	Valerie Nickel	
<b>Approval Signature</b>		Date
<b>DVHA Contract Administrator</b>	Meaghan Kelley	
<b>Approval Signature</b>		Date

Comments: \_\_\_\_\_