

- 1. **Parties.** This is a contract for services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Vermont Information Technology Leaders, Inc., with a principal place of business in Burlington, VT (hereafter called "Contractor"). The Contractor's form of business organization is a corporation. The Contractor's local address is 1 Mill Street Suite 249, Burlington, VT 05401. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
- 2. **Subject Matter.** The subject matter of this contract is personal services generally on the subject of Vermont Health Information Exchange Network and related products and services. The Contractor shall conduct work as described in Attachment A.
- 3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$1,471,529.00.
- 4. **Contract Term.** The period of Contractor's performance shall begin on July 1, 2017 and end on June 30, 2018.
- 5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office is required.  
Approval by the Secretary of Administration is required.  
Approval by the Agency of Digital Services is required.

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

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

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>	<u>For the Contractor</u>
Name:	Meaghan Kelley	Emily Yahr	John K. Evans
Phone #:	802-241-0393	802-343-8218	802-861-1935
E-mail:	Meaghan.Kelley@vermont.gov	Emily.Yahr@vermont.gov	Jevans@vitl.net

**DVHA Monitoring of Contract:**

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

**CONTRACTOR:**

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

**STATE:**

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

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

**8. Cancellation.** This contract may be cancelled by either party by giving written notice at least 30 days in advance. Notwithstanding this provision, if a governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this contract are provided, is not in compliance with State and Federal law or is operating with deficiencies the State may terminate this contract immediately and notify the Contractor accordingly. Also, in the event that federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract with no obligation to pay the Contractor from State revenues.

**9. Attachments.** This contract consists of 51 pages including the following attachments, which are incorporated herein:

- Attachment A - Specifications of Work to be Performed
- Attachment B - Payment Provisions
- Attachment C – Standard State Provisions for Contracts and Grants
- Attachment D - Other Terms and Conditions
- Attachment E - Business Associate Agreement
- Attachment F - Agency of Human Services' Customary Contract Provisions
- Attachment G – Licensing Agreement
- Attachment H – Required Forms

The order of precedence of documents shall be as follows:

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

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

**BY THE STATE OF VERMONT:**

**BY THE CONTRACTOR:**

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CORY GUSTAFSON, COMMISSIONER  
NOB 1 South, 280 State Drive  
Waterbury, VT 05671  
Phone: 802-241-0246  
Email: Cory.Gustafson@Vermont.gov

DATE

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JOHN K. EVANS, PRESIDENT & CEO  
Burlington, VT 05401  
Phone: 802-861-1935  
Email: JEvans@vitl.net

DATE

## ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

### 1. Background:

The purpose of this agreement is to support the on-going design, development, and implementation of services to enhance the Vermont Health Information Exchange (VHIE), operated by the Contractor on behalf of the State of Vermont. The projects included in the scope of this agreement are focused on establishing and remediating interfaces, ensuring that the highest-quality data is being transmitted to the VHIE, and supporting Health Care Organizations with the exchange and access of health data.

### 2. Definitions:

- 2.1 *ADT Message* means a category of Health Level 7 message format typically used for patient demographics updates and for admission, discharge and transfer events.
- 2.2 *Blueprint* means the Vermont Blueprint for Health, a State program authorized by 18 V.S.A. Chapter 13 which defines Blueprint as a “program for integrating a system of health care for patients, improving the health of the overall population, and improving control over health care costs by promoting health maintenance, prevention, and care coordination and management”.
- 2.3 *Blueprint Clinical Data Repository* means a statewide clinical data registry hosted in the State’s hosting environment, operated by the Contractor, and managed by the Blueprint team or designated Contractor.
- 2.4 *Business Associate* means Contractor and any Contractor working with Contractor to fulfill its responsibilities under this Agreement, including but not limited to Data Contractor(s), when any of them perform services described in 45 C.F.R. § 160.103
- 2.5 *CCD* means the Continuity of Care Document (CCD or consolidated CDA) specification which is an XML-based markup standard intended to specify the encoding, structure, and semantics of a patient summary clinical document for exchange.
- 2.6 *Client Services* means a team that provides assistance and advice to health care organizations related to the adoption and use of health information and exchange technologies, such as implementation and use of Contractor services, Meaningful Use consulting, security risk assessment consulting, and Blueprint data quality consulting.
- 2.7 *Completed Interface* means an interface that has been tested and demonstrated to be fully connected and operational, stable on an ongoing basis, and useable for routine exchange and placed in production by the source (sending) or destination (receiving) organization, and containing security features to protect health information.
- 2.8 *Electronic Health Record (EHR)* is a digital version of a patient's chart. EHRs are real-time, patient-centered records that make information available instantly and securely to authorized users.
- 2.9 *Executive Management Team (EMT)* means a team comprised of the Agency of Human Services’ Director of Health Care Reform, the Executive Director of the Blueprint for Health, the Contractor’s CEO, a designated member of Contractor’s senior leadership team, a designated member of DVHA’s Senior Leadership Team, and the State’s Health Information Exchange/Health Information Technology Integration Manager.
- 2.10 *HDM MPI* means a secondary master patient/person index used to manage and improve the match rates for patients in the Health Data Management repository.
- 2.11 *Health Care Organizations (HCO)* includes: ACOs and licensed medical providers such as private and

commercial labs, hospitals, primary care and specialist practices, ACOs, and community providers.

- 2.12** *Health Information Exchange (HIE)* means the electronic movement of health-related information among organizations according to nationally recognized standards with the goal of facilitating access to and retrieval of clinical data to provide safe, timely, efficient, effective, equitable, patient-centered care.
- 2.13** *Health Care Reform Initiatives* means innovation activities designed to increase access to, improve the quality, and contain the cost of health care for Vermonters.
- 2.14** *Interface* means a connection used for transferring certain types of data between a source or destination organization and VHIE with the ability to exchange data at the syntactic level. This includes but is not limited to transfer of demographic and clinical information from the HCO Electronic Health Record (EHR) and other clinical or administrative systems, transfer of laboratory orders and results, and transfer of diagnostic procedure orders and results. There are two parts to every interface: the part between the provider and the EHR vendor and the part between the provider and the VHIE.
- 2.15** *Interface Development Reimbursement Program* means a program whereby HCOs are reimbursed by the State for third-party costs incurred by the HCO associated with implementing an interface from their EHR system to the VHIE.
- 2.16** *Leadership* includes the following of the Contractor's positions: CEO, CFO, CTO, CMO, VP Operations, VP Client Services, and VP Marketing and Business Development.
- 2.17** *Meaningful Use* shall have the same meaning as in Title 42, Part 495 if the Code of Federal Regulations
- 2.18** *Medicare Access and Children's Health Insurance Program (CHIP) Reauthorization Act (MACRA)* means these programs as defined by Centers for Medicare and Medicaid Services.
- 2.19** *Medication History* means a compilation of filled prescription information from a medication history service based on data gathered from participating pharmacies across the US, to include Vermont, and includes information such as medication name, strength, quantity, and fill date.
- 2.20** *Medicity* means the currently contracted vendor that provides infrastructure and other products and services to the State, by and through a contractual relationship with the Contractor, in support of the VHIE and other HIE activities.
- 2.21** *Onboarding* means the process by which the providers at a Health Care Organization (HCO) are authenticated, granted access to a provider service, and trained in the use of that provider service. This process consists of three steps: Profiling the HCO, enrolling authorized providers, and launching the service at that HCO.
- 2.22** *Secure Data Repository* means the secure database where patient demographics and clinical data are stored in the VHIE.
- 2.23** *Single Sign On (SSO)* is the capability to log into multiple related, but independent software systems using one user name and password.
- 2.24** *Sprint Management Team* means a team responsible to assure that the Blueprint and Contractor work together to coordinate participation of all Blueprint organizations in data quality improvement processes. The Team shall be responsible for making decisions and resolving disputes around data quality, data use, and technical issues. This team will be comprised of two (2) members designated by the Blueprint and two (2) members designated by the Contractor. The Blueprint will designate the chair or lead for the Sprint Management Team.

- 2.25 *Sprint Project* means a project focused on a specific clinical site and consisting of several activities to improve end-to-end data completeness, accuracy, consistency and integrity.
- 2.26 *Technical Support Services* means the team that provides hardware and software support for Contractor staff and client facing support services to resolve VHIE services issues.
- 2.27 *Uptime* means the measure of the time a computer system is working and available to the users of the computer system.
- 2.28 *VHIE Supporting Infrastructure* means any technical infrastructure, hardware, and software utilized by the Contractor to provide services, capabilities, and support to the operation, maintenance, and expansion of health information exchange in Vermont.
- 2.29 *VHIE MPI* means the Community Master Patient Index in Medicity which links together patient identities from each source organization's Enterprise Master Patient Index (EMPI).
- 2.30 *VITLAccess* means one of several service offerings provided to authorized providers. VITLAccess is a secure Internet portal which provides authorized providers, with proper patient consent, a patient centered view of the Personal Health Information (PHI) available through the VHIE.
- 2.31 *VITLDirect* is a secure messaging service that enables health care organizations to send messages to other providers.

### 3. Scope of Work:

#### 3.1 Connectivity

This section pertains to the creation and maintenance of interfaces that connect electronic health records and other health management systems to the VHIE for the purpose of exchanging health care data.

**Connectivity Goal #1 – Remediation and New Interfaces:** Goal 1 for this period related to section 3.1 is to create new interfaces and maintain current interfaces, specifically those directly funded by the HITECH Act for HCOs meeting Meaningful Use standards in accordance with the State's SFY2018 connectivity goals.

To achieve this goal, the Contractor will:

- Implement HCO interfaces as required by a prioritized list of both new and replacement interfaces upon execution of this agreement. Contractor shall implement a minimum of 64 of the 85 combined new and replacement interfaces included on this list. The prioritized list of interfaces to be developed in conjunction with the State will be based on the following selection criteria:
  - Known HCO readiness of the HCO to connect to the VHIE
  - Available HCO resources
  - HCO's ability to adhere to the Vermont Interface Criteria (VIC)
  - Eligibility for HITECH funding
- Conduct remedial efforts and implement replacement interfaces for organizations originally implemented using HITECH funding to the VHIE by performing remediation efforts. The need for replacement interfaces is often caused by changes such as EHR version upgrades, clients switching EHR vendors, organization acquisitions or mergers, and organization practice location openings or closures.

To demonstrate achievement of this goal, the Contractor will:

- 3.1.1 Provide the State with a list of known requests for new and replacement interfaces upon execution of this contract. Subsequent lists will be provided 15 days prior to the beginning of each quarter thereafter for the length of the contract term.

- 3.1.1.1 Upon the first day of each State fiscal year quarter, the State will respond to the Contractor's list, indicating which activities may be supported by HITECH funding for appropriate use of Federal funds.
- 3.1.1.2 In the circumstance where unplanned interface remediation activity must occur, the Contractor will notify the State within 5 business days prior to beginning the interface remediation. The State will respond within 5 days regarding HITECH applicability and approval.
- 3.1.2 Provide the State with attestations from VHIE clients confirming implementation of new and replacement interfaces. These attestations will confirm the exchange and validity of data between the HCO's EHR and the VHIE. The attestations must be submitted in alignment with the end of the month reporting in which the interface was remediated. Attestations may be provided by either the individual HCOs or authorized representatives of the HCOs (such as the Blueprint for Health or an accountable care organization).

### 3.2 Client Services

**Client Services Goal #1 - Meaningful Use & Security Risk Assessment Consulting:** The goal for this period related to section 3.2 is to provide Meaningful Use and security risk assessment consulting services for HCOs.

To achieve Goal 1 for section 3.2, the Contractor will:

- Provide the State with a monthly report detailing Meaningful Use and security risk assessment consulting services provided.

To demonstrate achievement of Goal 1 for section 3.2, the Contractor will:

- 3.2.1 The Contractor shall provide the State with monthly attestations from impacted entities of Meaningful Use and security risk assessment consulting services provided during the previous month.

### 3.3 Access and Use

**Access & Use Goal #1 – Continued Access to Health Data:** Goal 1 for this period related to section 3.3 is to support continued use of all current methods of access to health data in the VHIE including VITLAccess, SSO from an EHR, or a direct query via EHR. Using any of these methods, with patient consent, allows treating providers access to patient data at the point of care.

To achieve Goal 1 for section 3.3, the Contractor will:

- Engage with HCOs to implement (profile, enroll, launch) and maintain the VITLAccess or direct query service per the prioritized list provided by the State.
- Through the client services team, implement the VITLAccess or direct query via EHR service to a minimum of 70% of the targeted HCOs included in the Contractor's recommended list of targeted HCOs. The Contractor and the State shall mutually agree on the final list of targeted HCOs, which will include HCOs currently in flight with VITLAccess implementations as of July 1, 2017. This list will be provided by the Contractor to the State upon execution of this agreement for final approval within 15 business days of submission.

To demonstrate achievement of Goal 1, the Contractor will:

- 3.3.1 Provide the State with a final list of prioritized VITLAccess sites upon execution of this agreement.
- 3.3.2 Provide the State with a quarterly report detailing HCOs VITLAccess service implementations designated by standard client services model and/or on-line self-administered model. Reports are due for the quarters ending 9/30/17, 12/31/17, 3/31/18, and 6/30/18. Reports are due on the 15th day after the end of each quarter, except the final report for the quarter end 6/30/18 shall be due on

6/30/18. The report must also include the status of clients receiving post go-live VITLAccess services, total patient queries in VITLAccess per month, number of queries in VITLAccess per HCO per month, identified list of top 100 users per month by number of queries, number of SSO queries per month, number of direct or external network queries performed by XDS.b or XCA per month, number of queries specific to medication history per month, number of messages transmitted through the VITLDirect tool and number of VITLDirect users.

- 3.3.3 Implement VITLAccess and/or direct query service with HCO clients in accordance with the agreed upon prioritized implementation list.

### 3.4 Blueprint for Health

The section pertains to the maintenance, support and enhancement of the Blueprint for Health's (Blueprint) Clinical Registry (BPCR).

**Blueprint for Health Goal #1 – Interface Onboarding & Remediation:** Goal 1 for section 3.4 is for the Contractor to work with the Blueprint staff to execute interface onboarding and remediation efforts in accordance with data requirements and priorities mutually agreed to by the Contractor and the Blueprint.

To achieve this goal, the Contractor will:

- Work on remediation activities for interfaces due to external events and report to the Blueprint with any changes to the interfaces requiring remediation and/or causing possible impacts to the data received in the BPCR.
- Onboard Blueprint selected sites (up to 12) in accordance with Blueprint's data requirement standards.
- Provide a BPCR Site Selection Report containing sufficient information to allow the State to understand if the selected site will be able to maintain a successful interface connection to the BPCR.
- Participate in the BPCR Onboarding Team which shall consist of the Contractor's staff representing operations including Rhapsody and the BPCR hosted environment. The team will meet weekly to support interface onboarding activities of which the Contractor is responsible.

To demonstrate achievement of this goal, the Contractor will deliver the following:

- 3.4.1.1 Provide a BPCR Site Selection Report to the Blueprint designee(s) within 15 days of receipt of the Blueprint's selected sites. (The Site Selection Report will at minimum match the format and content of the version that the eHealth Specialist and the Onboarding Team have produced over the last four (4) years in preparation for Blueprint Sprints.) For each of the Blueprint's selected sites, the Report shall contain but not be limited to: a list of interfaces, live or offline, connected to the VHIE; vendor information including the Contractor's familiarity with the vendor, the type of data sent in the ADT and each section of the CCD (via the technical assessment the Contractor has each vendor complete) that the vendor reports to send. The Report shall also contain an overview of the ADT data content including MSH-4, parent and children sites, and NPI's for providers for all selected sites.
- 3.4.1.2 Provide the State with a Site Initial Assessment Report for each of the Blueprint's selected sites, which provides details of all ADT and CCD messages sent to the VHIE and the BPCR. The format of the report has previously been developed in conjunction with the Contractor in 2017, and the purpose of the Report is to provide the Blueprint designee(s) with information to support the validation of the CCD during the onboarding process and to identified missing structured data from existing interfaces on an ongoing basis. The Site Initial Assessment Report is to be delivered to the BPCR Onboarding team three (3) business days after the completion of the two-week test feed being sent to the BPCR Test environment.
- 3.4.1.3 Onboard up to 12 Blueprint selected sites. Onboarding must meet minimum data-requirement standards established for the Blueprint's Clinical Registry and point interfaces to required

connections. Contractor will provide a sample of the ADT and CCD messages being transmitted from each of the onboarded sites to the Blueprint Clinical Registry within thirty (30) days.

- 3.4.1.4 Participate in the weekly BPCR Onboarding Team meeting specific to onboarding and remediation of BPCR interfaces, and provide meeting schedule confirmations and attendee lists in advance of meeting.

**Blueprint for Health Goal #2 – Data Quality Sprints:** Goal 2 for section 3.4 is to establish the highest quality data exchange that results in high quality health data transmission to the BPCR for measurement and analysis in support of Blueprint practices.

To achieve this goal, the Contractor will:

- Participate in the Blueprint Sprint Management Team meetings to identify and mitigate applicable data quality issues related to the BPCR. The Sprint Management Team will reach decisions as part of a collaborative team process. The Sprint Management Team will review, discuss, and resolve issues. The membership of this team will include a minimum of one member of the Contractor's operations team representing the BPCR, e-health specialists' work, and general VHIE operations, as well as designees from the Blueprint.
- Provide sufficient staff resources to assist the BPCR team in completing the Blueprint Connectivity Dashboard Report, work with HSO on workflow review, and work with vendors on data remediation.

To demonstrate achievement of this goal, the Contractor will deliver the following:

- 3.4.2.1 Bi-weekly, participate in the Blueprint Sprint Management Team meetings. Contractor will respond to escalated data quality issues and provide guidance and decision making for Sprint and onboarding team. Contractor will communicate any changes to connectivity as it pertains to Blueprint practices during these meeting.

- 3.4.2.2 Provide the State with a monthly Blueprint Connectivity Dashboard Report to monitor all existing Blueprint interfaces ever onboarded for the purpose of maintenance and remediation. At minimum, the reports are to include reporting on: data connectivity to the VHIE by all site connections, and what message types have been sent to the BPCR. Reporting on data stored in the Contractor's data warehouse for Blueprint sites may be provided in part through Tableau or a similar reporting tool.

### **3.5 Health Information Exchange Assessment**

The section pertains to third-party services procured by the State to assist in conducting a comprehensive review of the State's Health-IT Fund established by 32 V.S.A. § 10301, Health Information Technology Plan established by 18 V.S.A. § 9351, and Vermont Information Technology Leaders (the Contractor) established by 18 V.S.A. § 9352. These services will not be procured from the Contractor, but the State requires the Contractor's participation to ensure the assessment is successful.

- 3.5.1 Contractor's staff and Leadership shall comply with the requests of the State and their contracted vendor as it pertains to the comprehensive review of Vermont's Health Information Exchange and Health Information Technology. The Contractor may utilize funds of up to \$35,000 as compensation for reasonable and necessary time and effort expended for this assessment. The "Reasonable and necessary" determination of time and effort expenses will be determined by the State and the State's Contractor under the HIT Evaluation contract (where applicable),

## **4. Executive Management Team (EMT)**

The EMT will oversee the activities in this contract and resolve issues or concerns as may be necessary. A monthly meeting will be convened by the State to review all deliverables noted in this agreement. Should the



EMT not come to agreement, final determination will be made by the Commissioner of the State's Department of Vermont Health Access (DVHA). Any decision made by the EMT, or the Commissioner of DVHA, that requires an amendment to this contract shall be documented and signed by the duly authorized representative of the State and Contractor and is not effective until this Agreement is amended to reflect the EMT's or Commissioner of DVHA's decision.

## **5. Change Management Process:**

The Change Management process will apply to any minor change that affects the scope, baseline, objectives, implementation/ deployment strategy, staffing plan or content of key deliverables. The State or the Contractor may request a change to this original scope of work at any time using a formal Change Order Request. Any change that alters the essential terms of the original contract, including any change that expands or decreases the statement of work, the contract duration, the payment terms and/or the contract maximum amount, shall require a Contract Amendment in accordance with State contracting policies and procedures. Under no circumstances may a Change Order be used where a Contract Amendment is otherwise required pursuant to the Contract Amendments, Approval and Execution process set forth in State Administrative Bulletin 3.5.

The Change Order Request will be evaluated for its impact on the scope, schedule, quality and cost, and the evaluation reviewed in a meeting between the Contractor and the State. Based on both parties' review and the mutual agreements reached, necessary Change Orders will be executed to the planned effort, budget, schedule and resource planning.

Both parties recognize that the Change Order process does not obviate the need for State or federal regulatory review of amendments to the scope, budget, or maximum amount of this agreement. Change Orders themselves do not modify the terms of this agreement. The Change Order process may initiate a contract amendment, and if required by Bulletin 3.5, the Change Order shall not be binding until formally incorporated by Amendment.

Each Change Order must be pre-approved before any work shall begin. The State will not pay for services that are not previously approved in a Change Order by both authorized representatives listed within this section. The State will not pay for the effort involved in developing a Change Order. The Contractor shall bear the cost of estimating the cost or savings, time, and Contractor resources required to implement all Change Order Requests forthcoming from the State during the course of the Project. The State Authorized Representative and the DVHA Business Office have final authority over whether or not a Change Order is initiated under this agreement. A Change Request will be implemented only upon the request of the State Authorized Representative(s). All the Change Requests will be recorded with the details of the requester and approver, resolution, business and technical impact, impact to schedule and cost, and dependencies on other rollouts.

- 5.1 A collaborative Change Control Board (CCB) consisting of members of the State and the Contractor will be established by the State to decide which changes are approved, rejected, escalated, or in need of further study. CCB members shall be established by the State by July 31, 2017.
  - 5.1.1 A Change Order Request must be submitted to the CCB utilizing the change request form found within Attachment H – Required Forms. The CCB shall only convene when a complete change order request form has been submitted.
  - 5.1.2 The State will log all change order requests in the Change Control Register.
  - 5.1.3 The Change Control Board will review and determine whether to: authorize, reject or defer the change order request.
    - If approved, the State will adhere to Bulletin 3.5 to determine if a Contract Amendment is

required to reflect the authorized changes and update the Change Control Register to reflect the new status. This will be tracked by the State until it is completed.

- If a change order request needs further study, the Change Control Board may assign a Subject Matter Expert (SME) to analyze and document the feasibility of making the change to include risks. Wherever possible the SME will document the impact of not making the requested change. If accepted, rejected or deferred, the State updates the status in the Change Control Register.
- If the CCB cannot come to agreement on a change order request, the change order request shall be escalated to the EMT for resolution.

#### 5.1.4 Change Management Responsibilities

- CCB - Formally approves, rejects, escalates, and defers change order requests. Secures incremental funding. Assigns SME to analyze requests.
- The State documents change orders and tracks each through the period of performance under this agreement.
- SME - Provides analysis and documentation of the feasibility of making the change to include risks of not making the change. Person assigned depends upon nature of request.

### 6. Reporting Requirements:

Contractor shall submit reports and deliverables to the State in accordance with the criteria and frequency detailed in Attachment A Section 3 and Attachment B: Payment Provisions. Release of payments requested in accordance with Attachment B: Payment Provisions will be contingent on submittal of the reports by the Contractor and approval of the reports by the State. The State reserves the right to request within 10 days that the Contractor provide additional information on reports to document deliverables or other progress prior to release of payment. Payment against deliverables constitutes approval. For any reports or deliverables not so approved, the Contractor shall make all changes required by the State for approval within 30 days of notice from the State. No payment shall issue in advance of the State's approval of Contractor's submission.

### 7. Dispute Resolution

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

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

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

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

### 8. Ensuring Appropriate Use of Federal Monies

8.1 Both parties recognize the significance of the federal funding for this Agreement, specifically the significance of federal grant monies. More specifically, both parties recognize the limitations of funding because of the use of federal monies. Both parties agree to comply with the terms and conditions under 45 C.F.R. § 75 and 2 CFR Part 200 as implemented by the federal granting entity. The State will only reimburse the Contractor/Subrecipient for allowable costs under 45 C.F.R. § 75 and 2 CFR Part 200 as

implemented by the federal granting entity. By signing this agreement, the Contractor/Subrecipient is attesting that they have a full comprehension of 45 C.F.R. § 75 and 2 CFR Part 200 as implemented by the federal granting entity.

- 8.2 (Section 8.2 will apply if this Agreement is funded in any part with federal grant monies): To protect grant funds from federal disallowance and recovery from the State or the Contractor, the Contractor will comply with the following:
- 8.2.1 Work invoiced by the Contractor for the purpose of expending funds against this contract will include only work defined in Attachment A of this contract (inclusive of a detailed budget with supporting schedules).
  - 8.2.2 Contractor shall obtain written approval from the State prior to entering into a contractual relationship for work defined by this Agreement to be performed by another entity by completing the Subcontractor Approval Form in Attachment H.
  - 8.2.3 The State reserves the right to audit the Contractor to ensure compliance with State and Federal regulations, including the cost allocation methodologies referenced below.
  - 8.2.4 The Contractor must separate accounting between projects identified in section 3 of this Attachment A.
  - 8.2.5 Any work performed outside of the direction of the State will not be reimbursed. The State contact to authorize direct work under this agreement is the State's representative referenced on Page 2 of this Agreement.
- 8.3 The Contractor is responsible for compliance with any and all applicable federal regulations or guidelines specific to supporting the funding defined in this agreement. Changes submitted according to Section 5 [Change Management Process] of Attachment A shall be reviewed for compliance with State and federal law and may be subject to prior approval from State and/or federal regulators.

## 9. Independent Review

Contractor acknowledges and agrees that pursuant to 18 V.S.A. § 9352(c)(2), the State is entitled to review the Contractor's technology for security, privacy and interoperability with State government information technology, consistent with the State's health information plan required by Section 9351 of Title 18. The State will hold in reserve funds up to and not to exceed \$25,000 for standard Independent Review and \$50,000 for Complex Independent Review. Such review may include: (A) an acquisition cost assessment; (B) a technology architecture review; (C) an implementation plan assessment; (D) a cost analysis and a model for benefit analysis, or (E) an impact analysis on net operating costs for the agency carrying out the activity. Upon completion of the review, Contractor shall have the opportunity to review and respond to the independent review prior to the State's final acceptance of the review. Upon the State's request, Contractor shall meet with the State to discuss the results and Contractor will cooperate with the State to address any aspects of the Agreement or services that are identified in the review as the State deems necessary. Contractor acknowledges and agrees that if necessary and as required by the State, this Agreement will be amended to address the issues identified in the review.

## 10. Subcontractor Requirements

For purposes of obtaining prior written consent from the State pursuant to Attachment C, Section 18, the Contractor must first fill out and submit the Subcontractor Compliance Form (Attachment H – Required Forms). Upon receipt of the completed Subcontractor Compliance Form, the State shall review and respond with approval or request additional information if needed within 5 business days, provided however, that the State's failure to respond within this timeframe shall not constitute deemed consent to a proposed subcontractor. Approval of a subcontract may be contingent upon the State's review of the proposed subcontract agreement. The Contractor shall be fully responsible for any work completed by its contractors and consultants. All work performed by subcontractors and consultants is subject to all conditions and requirements included in this Agreement. For vendors that have been previously approved as a

subcontractor by the State, and that have been procured utilizing a competitive RFP process, or similar procurement approach in accordance with Contractor's procurement policy, where applicable, the State shall expedite re-approval of the Contractor extending its previously approved services with these known vendors. The Contractor shall notify the State utilizing the Subcontractor Compliance Form upon renewal of any subcontract.

The Contractor shall submit the Subcontractor Compliance Form to:

Meaghan Kelley, Contract Manager: Meaghan.Kelley@vermont.gov

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

For subcontractor agreements that were in existence prior to the execution of this contract agreement, the Contractor shall submit the Subcontractor Compliance Form for the State's review and approval no later than July 1, 2017. In the event State does not approve subcontractor agreements in existence prior to the execution of this contract agreement, Contractor shall be provided reasonable time to select a suitable alternative Subcontractor.

**ATTACHMENT B  
 PAYMENT PROVISIONS**

1. The maximum dollar amount payable under this Agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for services and deliverables as specified in Attachment A, up to the maximum allowable amount specified on page one of this Agreement. The State of Vermont's payments terms are Net 15 days from date of an error-free invoice. Payment is contingent upon the State's review and approval of each deliverable.
2. Contractor shall submit detailed invoices, which shall include an invoice number, date of submission, dates of service, description of services and deliverables, the Agreement number, total amount billed broken down into work packages by project and shall be signed by an authorized representative of the Contractor.
3. Invoices and any required reports shall reference this contract number and be submitted electronically to:  
 Meaghan Kelley: [Meaghan.Kelley@vermont.gov](mailto:Meaghan.Kelley@vermont.gov)
4. No personnel benefits or insurance, except as otherwise noted, will be reimbursed by the State.
5. The total maximum amount payable under this contract shall not exceed \$1,471,529.
6. In the event that a Progress Report or deliverable is not submitted to the State or that a Progress Report or deliverable has gone through all remediation steps as described in Sections 6 and 8 of Attachment A and has been escalated to the EMT, or Commissioner of DVHA, with the resolution that the Progress Report or deliverable is not accepted by the State, the State shall not release payment for the Progress Report or deliverable. If the EMT, or the Commissioner of DVHA (whichever is applicable), decides to allow the Contractor to resubmit at a later date, the Contractor will not receive payment until the Progress Report or deliverable is approved by the State and an invoice is received in accordance with this Attachment B.

7. Payment Schedule:

Project	Deliverable Detail	Deliverable Due Date	Amount due upon Deliverable	Maximum Payable Amount
3.1 Connectivity Goal #1: Remediation & New Interfaces	3.1.1 Provide a list of known requests for new and replacement interfaces.	Execution of the agreement, 9/15/17, 12/15/17, 3/15/18	\$5,000 per quarter	\$20,000
	3.1.2 Provide profile project charter ("profile") and launch attestations confirming implementation of new and replacement interfaces ("launch"). Provide attestations for existing remediated interfaces.	Due by the 15 <sup>th</sup> day after the end of each month beginning July 2017	Each Profile: \$9,532.35 Each Launch: \$4,085.29 Each Existing Interface Remediation: \$4,500	\$880,529

Project	Deliverable Detail	Deliverable Due Date	Amount due upon Deliverable	Maximum Payable Amount
<p><b>3.2 Client Services</b>  <b>Goal #1: Meaningful Use &amp; Security Risk Assessment Consulting</b></p>	<p>3.2.1 Provide the State with attestations from impacted entities of Meaningful Use and security risk assessment consulting services provided during the previous month. Payment is contingent upon the delivery of attestations from impacted entities.</p>	<p>Due by the 15<sup>th</sup> day after the end of each month beginning July 2017</p>	<p>\$13,875 monthly</p>	<p>\$166,500</p>
<p><b>3.3 Access &amp; Use Goal #1: Continued Access to Health Data</b></p>	<p>3.3.1 Provide a final list of prioritized VITLAccess sites</p> <p>3.3.2 Provide the State with a quarterly report detailing:</p> <ul style="list-style-type: none"> <li>• HCOs VITLAccess service implementations designated by standard client services model and/or on-line self-administered model.</li> <li>• The identified list of top 100 VITLAccess users per month by number of queries; and</li> <li>• The number of:                             <ul style="list-style-type: none"> <li>○ clients receiving post go-live VITLAccess services;</li> <li>○ total patient queries in VITLAccess per month;</li> <li>○ SSO queries per month;</li> <li>○ queries in VITLAccess per HCO per month;</li> <li>○ direct or external network queries performed by XDS.b or XCA per month;</li> <li>○ queries specific to medication history per month;</li> <li>○ of messages transmitted through the VITLDirect tool; and,</li> <li>○ VITLDirect users.</li> </ul> </li> </ul>	<p>Execution of the agreement</p> <p>Quarterly for the periods ending 9/30/17; 12/31/17; 3/31/18; and 6/30/18</p>	<p>\$5,000</p> <p>\$1,250 per quarterly report</p>	<p>\$5,000</p> <p>\$5,000</p>

Project	Deliverable Detail	Deliverable Due Date	Amount due upon Deliverable	Maximum Payable Amount
	3.3.3 Implement VITLAccess and/or direct query service with HCO clients in accordance with the agreed upon prioritized implementation list.	Due by the 15 <sup>th</sup> day after the end of each month beginning July 2017	Hospitals: \$20,000 each profile \$12,000 each enroll \$8,000 each launch  Multi-site: \$12,500 each profile \$7,500 each enroll \$5,000 each launch  Individual Practices: \$7,500 each profile \$4,500 each enroll \$3,000 each launch	\$190,000
3.4 Blueprint for Health Goal #1 – Interface Onboarding & Remediation	3.4.1.1 Provide BPCR Site Selection Reports to the Blueprint designee(s) which shall include: <ul style="list-style-type: none"> <li>○ a list of interfaces, live or offline, connected to the VHIE;</li> <li>○ vendor information including the Contractor’s familiarity with the vendor;</li> <li>○ the type of data sent in the ADT and each section of the CCD that the vendor reports to send;</li> <li>○ overview of the ADT data content including MSH-4, parent and children sites; and,</li> <li>○ NPI’s for providers for all selected sites.</li> </ul>	Within fifteen (15) days of receipt of the BPCR’s selected sites	\$5,000	\$5,000
	3.4.1.2 Provide eighteen (18) individual Site Initial Assessment Reports for each of the Blueprint's selected sites, which provides details of all ADT and CCD messages sent to the VHIE and the BPCR.	Three (3) business days after the completion of the two-week test feed being sent to the BPCR Test environment.	\$900 each	\$16,200
	3.4.1.3 Onboard up to twelve (12) Blueprint selected sites. Onboarding must meet minimum data-requirement standards established for the Blueprint’s Clinical Registry and point interfaces to required connections. Contractor will provide a sample of the ADT and CCD messages being transmitted from each of the onboarded sites to the Blueprint Clinical Registry.	Within 30 days upon onboard completion	\$1,943.33 each	\$23,320

Project	Deliverable Detail	Deliverable Due Date	Amount due upon Deliverable	Maximum Payable Amount
	3.4.1.4 Participate in the weekly BPCR Onboarding Team meeting	Due by the 15 <sup>th</sup> day after the end of each month beginning July 2017	\$1,750.00 for all meetings each month	\$21,000
3.4 Blueprint for Health Goal #2 – Data Quality Sprints	3.4.2.1 Participate in the bi-weekly Blueprint Sprint Management Team meetings	Due by the 15 <sup>th</sup> day after the end of each month beginning July 2017	\$7,665.00 for all meetings each month	\$91,980
	3.4.2 Provide the Blueprint Connectivity Dashboard Report	Due by the 15 <sup>th</sup> day after the end of each month beginning July 2017	\$1,000.00	\$12,000
3.5 Health Information Exchange Assessment Goal #1: Participation	Contractor’s reasonable and necessary staff time and effort to comply with the requests of the State and their contracted vendor as it pertains to the comprehensive review of Vermont’s Health Information Exchange and Health Information Technology.	Due by the 15 <sup>th</sup> day after the end of each month beginning July 2017. Billed at Rate per Hour to the nearest 15-minute interval	\$200 per hour for Leadership \$150 per hour for staff	\$35,000
<b>Grand Total</b>				<b>\$1,471,529</b>



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

**1. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific Grant or grant to which this form is attached.

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

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

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

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

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

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

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

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon

a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

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

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

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

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

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

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

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

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

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

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

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

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

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

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

**A. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

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

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

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

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

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

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

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

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

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

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

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

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

**19. Sub-Agreements:** Party shall not assign, subcontract the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of Subrecipients and any other person performing work under this Agreement pursuant to an agreement with Party or any Subrecipient.

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

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

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

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

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

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

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

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

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

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

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

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

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

**A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

**B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.

**C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

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

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

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

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

(End of Standard Provisions)

**ATTACHMENT D:  
OTHER TERMS AND CONDITIONS**

**1. OWNERSHIP AND LICENSE IN DELIVERABLES**

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

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

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

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

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

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

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

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State. If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

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

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

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

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

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of



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

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

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

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

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

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

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

### **3. SECURITY OF STATE INFORMATION.**

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

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

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

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

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

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time

(including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification.

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

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

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

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

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

- (i) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (ii) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.
- (iii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

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

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

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

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

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

**7. TERMINATION**

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

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

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

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

**9. IRS TERMS IF FEDERAL TAX INFORMATION WILL BE PROCESSED OR STORED (Per IRS Publication 1075)**

To the extent Attachment A clearly states that the Contractor's performance under this Contract involves the processing or storage of Federal tax information (as that term is defined in IRS Publication 1075), then, pursuant to IRS Publication 1075, the following provisions shall apply in addition to any other security standard or requirements set forth in this Contract:

**A. PERFORMANCE**

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

1. All work will be done under the supervision of the Contractor or the Contractor's employees.
2. The Contractor and the Contractor's employees with access to or who use Federal tax information must meet the background check requirements defined in IRS Publication 1075.
3. 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.
4. 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.
5. 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.
6. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State 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 State or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.
7. All computer systems processing, storing, or transmitting Federal tax information 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 Federal tax information.
8. No work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS.
9. The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
10. The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

**B. CRIMINAL/CIVIL SANCTIONS:**

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will 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 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and

employee that any such unauthorized further 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.

2. 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 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 the 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 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 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. These penalties are prescribed by IRC section 7213A and 7431, and set forth at 26 CFR 301.6103(n)-1.
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 of or access to State 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 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.
4. Prior to Contractor having access to Federal tax information, Contractor shall certify that each Contractor employee or other individual with access to or who use Federal tax information on Contractor's behalf pursuant to this Contract understands the State's security policy and procedures for safeguarding Federal tax information. Contractor's authorization to access Federal tax information hereunder shall be contingent upon annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification, and at least annually afterwards, Contractor will be advised of the provisions of IRCs 7431, 7213, and 7213A (see IRS Publication 1075 *Exhibit 4, Sanctions for Unauthorized Disclosure*, and *Exhibit 5, Civil Damages for Unauthorized Disclosure*). 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 Publication 1075, Section 10). For both the initial certification and the annual certification, the Contractor must sign a confidentiality statement certifying its understanding of the security requirements.

### **C. INSPECTION:**

The IRS and the State, with 24 hours' notice, shall have the right to send its officers, employees, and inspectors 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. for compliance with the requirements defined in IRS Publication 1075. The IRS's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology assets that access, store, process or transmit Federal tax information. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

**D. SERVICE ORGANIZATION CONTROL REPORTS:**

Contractor shall submit to the State, at the first quarterly review meeting, copies of the most recent service organization control ("SOC") reports from Contractor's vendors and Contractors who provide service or goods related to storage, maintenance, operations, or development of the VHIE and clinical data warehouse under this Contract. Contractor shall inform the State if any vendor or Contractor does not provide a copy of their SOC report to Contractor for submission to the State. The State may reject a SOC report submitted by Contractor for one of its vendors or Contractors if it does not conform to the requirements of this section.

The SOC reports shall conform and comply with accepted and customary professional industry standards and requirements for SOC reports (such as AICPA or SSAE) and should substantially contain, at a minimum, the following subject matter and components:

Subject Matter	1. Controls at a service organization relevant to user entities internal control over financial reporting. 2. Controls at a service organization relevant to security, availability, processing integrity confidentiality, or privacy pertaining to the VHIE and clinical data warehouse.
Components	For both subject matter's 1 and 2 above: a description of the service organization's system, that includes a service auditor's report that contains an opinion on: (a) the fairness of the presentation of the description of the service organization's system; (b) the suitability of the design of the controls; (c) the operating effectiveness of the controls; and (d) a description of the service auditor's tests of the controls and the results of the tests.

Contractor shall inform all applicable vendors and Contractors under this Contract about this requirement. Contractor shall make good faith efforts to require vendor or Contractor Contracts to contain terms and conditions that fulfill Contractor's performance under this section.

**APPROVAL:**

  
ASSISTANT ATTORNEY GENERAL

DATE: 6/29/17

**ATTACHMENT E:  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its Department of Vermont Health Access (“Covered Entity”) and Vermont Information Technology Leaders (“Business Associate”) as of July 1, 2016 (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached. Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

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

“Agent” means those person(s) who are agents(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

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

“Business Associate shall have the meaning given in 45 CFR § 160.103.

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

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

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

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

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

**2. Identification and Disclosure of Privacy and Security Offices.** Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity’s contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.



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

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

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

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

**4. Business Activities.** Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the Agreement requires the person or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

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

**6. Documenting and Reporting Breaches.**

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

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

Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it. Business Associate shall require its Subcontractor(s) to agree to these same terms and conditions.

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

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

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

8. **Providing Notice of Breaches.**

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

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

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

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

8.5 Business Associate shall notify individuals of Breaches as specified in 45 CFR § 164.404(d) (methods of

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

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

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

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

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

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

**14. Termination.**

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

18.8.

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

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

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

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

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

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

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

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

17.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such

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

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

**18. Miscellaneous.**

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

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

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

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

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

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

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

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 5/5/15)

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

**1. Definitions:**

For purposes of this Attachment F, the term "Agreement" shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term "Party" when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term "Party" shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term "Party" as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term "Party" shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.

**2. Agency of Human Services:**

The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.

**3. Medicaid Program Parties**

*(applicable to any Party providing services and supports paid for under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver):*

**Inspection and Retention of Records:** In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

**Subcontracting for Medicaid Services:** Notwithstanding any permitted subcontracting of services to be performed under this Agreement, Party shall remain responsible for ensuring that this Agreement is fully performed according to its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Party in connection with the performance of this Agreement, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Party must retain the authority to revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any requirement of this Agreement. Party shall make

available on request all contracts, subcontracts and service provider agreements between the Party, subcontractors and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

**Medicaid Notification of Termination Requirements:** Party shall follow the Department of Vermont Health Access Managed-Care-Organization enrollee-notification requirements, to include the requirement that Party provide timely notice of any termination of its practice.

**Encounter Data:** Party shall provide encounter data to the Agency of Human Services and/or its departments and ensure further that the data and services provided can be linked to and supported by enrollee eligibility files maintained by the State.

**Federal Medicaid System Security Requirements Compliance:** Party shall 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) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

#### **4. Workplace Violence Prevention and Crisis Response**

*(applicable to any Party and any subcontractors and sub-grantees whose employees or other service providers deliver social or mental health services directly to individual recipients of such services):*

Party shall establish a written workplace violence prevention and crisis response policy meeting the requirements of Act 109 (2016), 33 VSA §8201(b), for the benefit of employees delivering direct social or mental health services. Party shall, in preparing its policy, consult with the guidelines promulgated by the U.S. Occupational Safety and Health Administration for *Preventing Workplace Violence for Healthcare and Social Services Workers*, as those guidelines may from time to time be amended.

Party, through its violence protection and crisis response committee, shall evaluate the efficacy of its policy, and update the policy as appropriate, at least annually. The policy and any written evaluations thereof shall be provided to employees delivering direct social or mental health services.

Party will ensure that any subcontractor and sub-grantee who hires employees (or contracts with service providers) who deliver social or mental health services directly to individual recipients of such services, complies with all requirements of this Section.

#### **5. Non-Discrimination:**

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from 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, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall 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 as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), 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 of Vermont and/or federal funds.

Party further shall 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, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

#### **6. Employees and Independent Contractors:**

Party agrees that it shall comply with the laws of the State of Vermont with respect to the appropriate classification of its workers and service providers as “employees” and “independent contractors” for all purposes, to include for purposes related to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party agrees to ensure that all of its subcontractors or sub-grantees also remain in legal compliance as to the appropriate classification of “workers” and “independent contractors” relating to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party will on request provide to the Agency of Human Services information pertaining to the classification of its employees to include the basis for the classification. Failure to comply with these obligations may result in termination of this Agreement.

#### **7. Data Protection and Privacy:**

**Protected Health Information:** Party 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 Agreement. Party 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:** Substance abuse treatment information shall be maintained in compliance with 42 C.F.R. Part 2 if the Party or subcontractor(s) are Part 2 covered programs, or if substance abuse treatment information is received from a Part 2 covered program by the Party or subcontractor(s).

**Protection of Personal Information:** Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any 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 any other personal or identifiable information that is linked or linkable to a specific person, such as date and place or birth, mother’s maiden name, etc.

**Other Confidential Consumer Information:** Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

**Data Breaches:** Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal information identified above within 24 hours of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.



## **8. Abuse and Neglect of Children and Vulnerable Adults:**

**Abuse Registry.** Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact though (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

**Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) 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: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party 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.

## **9. Information Technology Systems:**

**Computing and Communication:** Party 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 Party as part of this agreement. Options include, but are not limited to:

1. Party's provision of certified computing equipment, peripherals and mobile devices, on a separate Party'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.

**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 Party (or subcontractor or sub-grantee), shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

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

If Party is operating a system or application on behalf of the State of Vermont, Party 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 Party's materials.

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property.

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

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party 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. Party 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, Party shall securely delete data (including archival backups) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

Party, in the event of a data breach, shall comply with the terms of Section 6 above.

#### **10. Other Provisions:**

**Environmental Tobacco Smoke.** Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal 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. The federal Pro-Children Act of 1994, however, does not apply to 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.

**2-1-1 Database:** If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or contact information as well as accurate and up to date information to its database as requested. The "Inclusion/Exclusion" policy can be found at [www.vermont211.org](http://www.vermont211.org).

**Voter Registration:** When designated by the Secretary of State, Party 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.

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

**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.

***AHS ATT. F 12.31.16***

## ATTACHMENT G LICENSING AGREEMENT

In consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the State and Contractor, the Parties agree as follows:

1. Description: The State hereby appoints Contractor and grants Contractor:

- A. per 18 V.S.A. § 9352, a revocable, limited, non-transferrable, non-exclusive, royalty-free license to manage, maintain, and operate, the statewide health information exchange network for the State, which consists of:
- i. State's Health Information Exchange ("VHIE");
  - ii. the Health Data Management ("HDM") Infrastructure; and
  - iii. VHIE Supporting Infrastructure; and
  - iv. Other State-owned tangible or intangible property (i-iv collectively "State Property"), as necessary to fulfill Contractor's obligations under DVHA Contracts 33799 and 33798 (herein "Agreement"); and
- B. a revocable, limited, non-transferable, non-exclusive, royalty-free license to use State Property for commercially reasonable purposes as Contractor solely deems fit. "Commercially reasonable purposes" means a use that is in conformity with customary and reasonable commercial practices and utilizing good faith business judgment, with respect to or related to services and products offered for sale or purchase by electronic health information exchanges to private or public customers within the geographic territory of the United States of America (collectively, the "License").

This License shall not be construed or interpreted to alter or change any legal ownership of property or property rights held by either party at the time of this Agreement's execution. Legal ownership of property or property rights held by the State arises from title vesting under function of previous and current contracts/grants, state and federal laws, and operation of law as may be described or clarified in the forthcoming (although not guaranteed) "Evaluation of Vermont's Health Information Technologies' Activities" contract (DVHA RFP # 03410-240-17).

### 2. Terms and Conditions of License

- A. Contractor can only use State property under this License to the extent permitted under Section 1 above. Any other purpose is not allowed. Contractor shall be responsible for the supervision, management, control, and use of State Property in accordance with this License and Agreement.
- B. Contractor retains no ownership, right, interest, or expectation in the State property (however changed in form) except as expressly stated in this License or in the License (or use thereof) beyond the time of the License's expiration or termination. State property, as used in this License, also includes any modifications or derivative works to the State Property or subsequently developed medium or technology under the Agreement or this License. This License has no redemption cash value.
- C. Except as expressly set forth in this License or Agreement, Contractor shall not, and shall not permit others to:
- i. reverse engineer, decompile, disassemble or otherwise attempt to obtain the source code from State Property;

- ii. remove, alter, cover or obfuscate any trademark, logo, copyright or other proprietary notices, legends, symbols or labels placed or embedded on or in any State Property; or
- iii. claim a security interest in State Property.

At the State's request, Contractor shall provide the State with a written list of all copies and locations of State Property. Contractor shall maintain complete and accurate records relating to Contractor and authorized agents by Contractor to use of State Property in sufficient detail to enable the State to confirm Contractor's compliance with the terms of this License.

**WARRANTY AND LIABILITY DISCLAIMER:**

**STATE PROPERTY MAY BE BURDENED, RESTRICTED, OR LIMITED IN SCOPE, FUNCTIONALITY, OR USE BY THIRD PARTY LICENSES AND INTELLECTUAL PROPERTY RIGHTS, AND THESE RESTRICTIONS MAY AFFECT CONTRACTOR'S USE OF STATE OF VERMONT PROPERTY. THE STATE OF VERMONT DOES NOT WARRANT OR GUARANTEE THE USE OF STATE PROPERTY IN ANY COMMERCIALY REASONABLE PURPOSE OR ANY PURPOSE AS CONTRACTOR MAY ENGAGE IN.**

**ANY STATE PROPERTY INCLUDED IN THIS LICENSE IS LICENSED IN "AS IS" AND "WITH ALL FAULTS" CONDITION. THE STATE OF VERMONT SPECIFICALLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT OR ANY CONDITIONS OF QUALITY OR ANY WARRANTIES ARISING BY LAW, STATUTE, USAGE OF TRADE, COURSE OF DEALING OR FITNESS FOR ULTRAHAZARDOUS ACTIVITIES. CERTAIN THIRD PARTY SOFTWARE IS LICENSED BY SUCH THIRD PARTY LICENSORS AND IS SUBJECT ONLY TO SUCH THIRD PARTY SOFTWARE LICENSE AGREEMENTS. IN PARTICULAR, THE STATE OF VERMONT SHALL NOT HAVE ANY RESPONSIBILITY WHATSOEVER FOR ANY PORTIONS OF STATE PROPERTY WHICH HAVE BEEN MODIFIED BY CONTRACTOR OR ON CONTRACTOR'S BEHALF WITHOUT THE STATE OF VERMONT'S PRIOR WRITTEN CONSENT. THE STATE OF VERMONT DOES NOT WARRANT THAT STATE PROPERTY SHALL MEET CONTRACTOR'S REQUIREMENTS OR THAT ITS OPERATION SHALL BE UNINTERRUPTED OR ERROR FREE, NOR THAT STATE PROPERTY ERRORS OR DEFECTS SHALL BE CORRECTED.**

**MOREOVER, IN NO EVENT SHALL WARRANTIES PROVIDED BY LAW, IF ANY, APPLY UNLESS THEY ARE REQUIRED TO APPLY BY STATUTE NOTWITHSTANDING THEIR EXCLUSION BY CONTRACT. NO DEALER, AGENT OR EMPLOYEE OF THE STATE OF VERMONT (EXCEPT THE COMMISSIONER OF DVHA BY WRITTEN STATEMENT) IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS OR ADDITIONS TO THIS WARRANTY DISCLAIMER PROVISION.**

**THE STATE OF VERMONT DOES NOT GUARANTEE, REPRESENT, OR WARRANT ANY REALIZATION OR EXPECTATION OF REVENUES, PROFITABILITY, OR COMMERCIAL SUCCESS BY USE OF THIS LICENSE.**

- D. Contractor's use and access of this License must conform to Attachment D of the Agreement, in particular, confidentiality, non-disclosure, and security protocols, except as otherwise stated in this License. This License shall not be construed or interpreted to modify, waive, or extinguish the Contractor's obligations

except as stated in this License. Except as permitted by this License, in no event may Contractor's use of this License permit any person or persons other than its affiliates, vendors, employees, agents, and independent contractors from gaining access or knowledge (actual or constructive) that allows or could reasonably allow such persons to learn of the following:

- i. State health information technology infrastructure or source code;
- ii. demographic, individually identifiable, or protected health information of any Vermont Medicaid beneficiary or applicants of State-affiliated programs or services; or
- iii. information regarding the State's employees, clients, vendors, consultants and affiliates.

- E. Any and all work performed with the purposes of this License shall be done in a good, safe, workmanlike manner and in accordance with applicable federal, state, and local statutes, rules, regulations and ordinances, including, but not limited to those privacy and data protection, collection, storage, transfer, sharing and/or other processing of data by health information exchanges.
- F. To the extent a conflict arises between Contractor's use of the State Property for the purpose of providing services under the Agreement and other permitted uses of the State Property (including for commercial uses), Contractor's use of the State Property for the purpose of providing the services under the Agreement shall take precedence. Further, while using the License, the Contractor shall not unreasonably or arbitrarily interrupt, reduce, limit, diminish, condition, or cancel the State's or its designee's direct or indirect benefit or use of State Property.
- G. By granting this License to Contractor, the State is not endorsing or approving Contractor's use of the License for purposes that Contractor plans, markets, undertakes, or performs. Neither the Contractor nor its affiliates, employees, or agents shall have the right to make any representation, warranty, or promise actually, apparently, or ostensibly on behalf of the State, or relating to any State Property.
- H. Except as stated in this License, Contractor's use and access of State property shall be governed by the terms and conditions of the Agreement. In the event that this License conflicts with any terms contained in the Agreement and in all other cases, the terms of the Agreement shall govern. If any provision of this License is declared by a court of competent jurisdiction to be excessively broad as to scope, activity, subject or otherwise so as to be invalid, illegal or unenforceable at law, such provision shall be constructed by limiting or reducing it so as to be enforceable to the maximum extent compatible with the applicable law as it shall then appear.
- I. Any revenue derived or resulting from Contractor's use of this License may be retained by Contractor at Contractor's election, provided that Contractor adheres to applicable laws, rules and regulations.
- J. Contractor shall complete and provide to the State a usage and transaction report (the form of which shall be provided by the State) on an annual basis and return it to State within thirty (30) days following the end of each calendar year.
- K. Contractor shall notify the State promptly in writing upon its discovery of any unauthorized use of this License or State Property or infringement of the State's patent, copyright, trade secret, trademark, or other intellectual property rights. Contractor shall not distribute any State Property to any person or entity unless necessary for Contractor to fulfill its obligations under this Agreement or permitted by this License. Further, Contractor shall not distribute any State Property to any person or entity if Contractor is aware that such person or entity may be involved in potential unauthorized use of State Property or other infringement of the State's proprietary rights.

- L. The State shall have the right to immediately terminate this License upon the occurrence of any of the following events by providing written notice to Contractor:
- i. a receiver is appointed for Contractor;
  - ii. Contractor makes a general assignment of all or substantially all of its assets for the benefit of Contractor's creditors; and
  - iii. Contractor ceases to do business in the ordinary course.

The State shall have the right to terminate this License upon the occurrence of any of the following events if the State provides notice to Contractor and allows Contractor to cure, terms of which shall be determined by the State, within a reasonable period of time and as per the agreement, which shall not be less than thirty (30) days. If Contractor fails to cure, the State shall have the right to provide notice to the Contractor that the Contractor has failed to cure and, by providing said notice, the license shall terminate. The events are:

- iv. Contractor uses or plans to use the License for a purpose other than those permitted by this License;  
or
- v. Contractor breaches the Agreement or the Agreement terminates.

This License shall terminate immediately upon expiration of this Agreement. This License does not survive the termination of this Agreement. Upon termination or revocation of this License, Contractor shall immediately deliver and surrender any and all State Property described in this License to the State.

**ATTACHMENT H – Required Forms  
Department of Vermont Health Access  
Subcontractor Compliance**

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

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

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

Scope of Subcontracted Services:

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

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

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

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

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

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



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

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

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

**Taxes Due to the State:**

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

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

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

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

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

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

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

CHANGE REQUEST FORM

**PROJECT CHANGE REQUEST FORM UNDER CONTRACT #33798**

In accordance with Attachment A, Change Management Process, this Project Change Request Form will be used by CCB members to review and approve changes to the budget, schedule, or scope of work of this Agreement. To the extent that budget increases or scope changes would be required, those changes would be subject to a formal amendment to this Agreement executed by the Contractor and the State Department of Vermont Health Access (DVHA). This document must be signed by both parties before being considered final. All Change Orders must comply with State of Vermont Bulletin 3.5.

Change Request Name:	Date submitted:	Priority: H M L
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Requested by:	Assessed by:
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Change Request ID (sequential, starting at #1):	
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Detail (Description of Proposed Change):

Reason for Change (Benefits):

Implications of Not Making This Change:

**CHANGE REQUEST ASSESSMENT**

Scope Impact:

Schedule Impact:

Budget Impact:

Other Implications:

Overall Assessment/Recommendation:

Requires Amendment to Agreement:  YES  NO

**CONTRACTOR CERTIFICATIONS**

**Taxes Due to the State.** Contractor further certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor 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.

**Certification Regarding Suspension or Disbarment.** Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment 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-contracting/debarment>.

PROJECT CHANGE REQUEST FORM UNDER CONTRACT #33798 CONTINUED		
<b>SIGNATURES:</b>		
<b>State HIE Program Director:</b>	<i>Approval:</i>	<i>Date:</i>
<b>CEO, VITL:</b>	<i>Approval:</i>	<i>Date:</i>
<b>State Fiscal Agent:</b>	<i>Approval:</i>	<i>Date:</i>
Explain if Disapproved:		