

### AMENDMENT

It is agreed between the State of Vermont, Department of Vermont Health Access (hereinafter called "State") and the Vermont Program for Quality in Health Care (VPQHC) (hereinafter called "Contractor") with principal place of business in Montpelier, VT that the contract dated March 1, 2015 is to be amended November 1, 2015 as follows:

1. **By deleting Section 3, Maximum Amount, on page 1 of 15 of the Base Agreement, and substituting in lieu thereof the following Section 3:**

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 **\$123,215.00**. See Attachment B, #1, FUNDING and PERIOD OF PERFORMANCE AUTHORIZATION REQUIREMENT.

Services performed between November 1, 2015, and the start of this contract amendment that are in conformity with Attachment A can be billed under this contract amendment.

2. **By deleting in Section I, Role of the Contractor Attachment A of Base Agreement and substituting in lieu thereof the following amended version of Attachment A, Section I:**

### ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

#### I. Role of the Contractor

The Contractor will serve as a Quality Improvement (QI) facilitator providing support to "integrated care teams" in communities across the state participating in a Care Management Learning Collaborative. QI facilitation requires competencies including implementing quality improvement methods, team facilitation, group dynamics, understanding and using data, and project management.

Vermont's interdisciplinary integrated care teams will consist of care coordinators and leaders from various medical and social service organizations, such as Primary Care and Specialty Practices; Designated Mental Health Agencies; Visiting Nurse Associations and Home Health Agencies; Hospitals and Skilled Nursing Facilities; Area Agencies on Aging; Blueprint Community Health Teams and Practice Facilitators; Support and Services at Home (SASH); Accountable Care Organizations (OneCare Vermont, Community Health Accountable Care, and Vermont Collaborative Physicians); Medicaid; Vermont Chronic Care Initiative (including care coordinators); commercial insurers; and people in need of care management services and their families.

As a QI facilitator, the Contractor will work with these integrated care teams to build capacity for effective team-based care, coordinate learning opportunities related to integration of services on behalf of people who need the services, implement promising interventions to enhance integration, and measure results of those interventions. The primary mechanism for learning and quality improvement will be a Learning Collaborative utilizing the Plan-Do-Study-Act (PDSA) model. The QI facilitator will provide primary support to selected communities. This will include attendance and participation in regularly scheduled meetings in each community, as well as meetings with its project leaders as needed. The QI facilitator will provide support for data collection, management, and interpretation to all pilot communities. This involves assisting teams with a) understanding data sources and using them to identify at-risk people and engage in effective panel management, b) identifying measures for and measuring the impact of selected interventions, and c) promoting an environment of collaborative learning between integrated care teams and across the health system.

The QI facilitator will attend and participate in regularly scheduled meetings of the leadership team of the

ICCMLC, as well as state government planning committee and workgroup meetings as requested. The QI facilitator will also participate as a member of the ICCMLC leadership team in the planning, design and presentation of in-person learning sessions and webinars for all pilot communities to enhance their knowledge of processes, methods and tools for integrated care management. The Contractor will also assist the leadership team in the overall evaluation of the ICCMLC efforts across the state. This includes reviewing current literature on recipient of care and provider experience surveys, identifying process and outcome measures, and participating in survey design, testing, and rollout.

The State and the Contractor recognize that communities will initiate and end the Learning Collaborative according to different time frames; not all communities will be active at the same time. The workload associated with additional communities has been estimated at a total level of effort that should not exceed 40 hours per week, on average. If the total level of effort exceeds an average of 40 hours per week, the Contractor shall provide the State with documentation of the time allocated to this agreement in a manner that is agreed upon by both the State and Contractor. If the State determines that an effort beyond an average of 40 hours per week is warranted, either party can initiate an amendment review process to this agreement in order to expand capacity to the Contractor for the additional communities. Alternatively, the Contractor and the State can agree that the Contractor will not be responsible for working with additional communities until the level of effort drops below 40 hours per week.

- 3. By deleting in Attachment A, Section II, A. 2., Contractor Activities of the Base Agreement and substituting in lieu thereof the following amended version of Attachment A, Section II, A. 2.**

## **II. Contractor Activities**

The QI facilitator will attend and participate in regularly scheduled meetings of the leadership team of the ICCMLC, as well as state government planning committee and workgroup meetings as requested. The QI facilitator will also participate as a member of the ICCMLC leadership team in the planning, design and presentation of in-person learning sessions and webinars for all communities to enhance their knowledge of processes, methods and tools for integrated care management. The Contractor will also assist the leadership team in the overall evaluation of the ICCMLC efforts across the state. This includes reviewing current literature on recipient of care and provider experience surveys, identifying process and outcome measures, and participating in survey design, testing, and rollout.

The contractor, with support of the ICCMLC leadership team, will work with integrated care teams as designated by the State to:

### **A. Support Change Management**

1. Facilitate meetings of the project and planning group teams as needed.
2. Coach community leaders in forming multi-disciplinary integrated care teams with a focus on quality improvement.
3. Foster integrated care teams' ownership for improving patient care and changing the way the services are provided.
4. Work with integrated care teams to assess their performance and establish project goals and parameters.
5. Use integrated care team data to assist in establishing sequences and timelines for quality improvement initiatives, and to evaluate the impact of changes.
6. Train integrated care teams in conducting PDSA cycles.
7. Coach integrated care teams in measuring and interpreting results of change.
8. Facilitate communication around evolving roles and relationships.
9. Recognize, reinforce, and celebrate success.

10. Provide feedback and coaching for integrated care team leaders.

**B. Provide Technical Assistance and Training**

1. Identify skills-based training needs for integrated care teams and front-line care managers, and work with the State to ensure that training occurs.
2. Provide technical assistance in identifying models of care, innovative strategies and evidence-based guidelines that support integrated care management.
3. Assist in implementing promising interventions.
4. Support integrated care teams in using data to identify people in need of integrated care management.
5. Assist integrated care teams in measuring and evaluating the results of interventions.

**C. Support the Effective Use of Information Technology**

1. Support integrated care teams in using technology to improve patient care and efficiency.
2. As appropriate, assist integrated care teams in implementing data collection tools (e.g., clinical registry, care coordination modules, risk stratification tools) and using them to improve panel management, care management, and other aspects of patient care.

**D. Create a Learning Health System**

1. Foster a shared learning environment through organization-to-organization mentoring.
2. Design and implement collaborative learning sessions.
3. Participate in shared learning activities of the Expansion and Quality Improvement Program (EQuIP) facilitator group (team meetings, conference calls, training and one-on-one meetings).

**E. Connect Integrated Care Teams with the Community**

1. Support the incorporation of integrated care teams into organization workflow.
2. Link integrated care teams with outside resources.

4. **By deleting in Attachment A, Section III, A. 2., Deliverables of the Base Agreement and substituting in lieu thereof the following amended version of Attachment A, Section III, A. 2.**

**III. Deliverables**

- A. During the term of this contract, and in collaboration with other contractor(s) and a Learning Collaborative Planning Team, the Contractor will provide:
  2. Starting June 1, 2015, monthly written progress reports submitted to State Authorized Representative, highlighting goals, activities, outcomes, timelines, deadlines, progress in each community, progress across all communities, and general progress against the project management plan.
5. **By replacing in its entirety Attachment B and substituting in lieu thereof the following amended version:**

**ATTACHMENT B  
PAYMENT PROVISIONS**

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually performed as specified in sections I-III in Attachment A up to the maximum allowable amount specified in this agreement. State of Vermont payment terms for this contract are Net 00 days from receipt date of invoice. The payment schedule for delivered products or rates for services performed, and any additional reimbursements, are included in this agreement.

The following provisions specifying payments are:

1. **FUNDING and PERIOD OF PERFORMANCE AUTHORIZATION REQUIREMENT:** This contract is funded by a federal grant and subject to federal approval by the Centers for Medicare and Medicaid Innovation (CMMI). No reimbursement shall be provided under this agreement without federal approval for the task, service, or product for which reimbursement is claimed.
  - a. In February, 2015 federal approval was sought for the time period of March 1, 2015-December 31, 2015 in the amount of **\$102,324**. Contractor may not begin work for the time period of March 1, 2015-December 31, 2015 without written authorization from the State of Vermont. Approval for funding is contingent on CMMI authorization.
  - b. In November, 2015 federal approval was sought for the time period of January 1, 2016- February 29, 2016 in the amount of **\$20,891**. Contractor may not begin work for the time period of January 1, 2016-February 29, 2016 without written authorization from the State of Vermont. Approval for funding is contingent on CMMI authorization.
2. Contractor invoices shall be submitted monthly (using templates in Appendix 1: Required Forms) and shall include billing for the following line items:

**Facilitation**

The Contractor shall invoice the State monthly on the payment schedule below for facilitation based on reporting requirements outlined in Attachment A. Monthly payments are **inclusive of travel and professional development/training** as needed to support the scope of work.

Mar-15	\$1,695.00
Apr-15	\$7,500.00
May-15	\$7,500.00
Jun-15	\$7,500.00
Jul-15	\$7,500.00
Aug-15	\$7,500.00
Sep-15	\$7,500.00
Oct-15	\$7,500.00
Nov-15	\$19,064.50
Dec-15	\$19,064.50
	\$92,324

Jan-16	\$10,445.50
Feb-16	\$10,445.50
	\$20,891.00

This agreement requires that the Contractor attain prior approval for any out-of-state travel. Travel performed

between November 1, 2015, and the start of this contract amendment that are in conformity with Attachment A can be billed under this contract amendment. At least seven (7) days prior to the anticipated date of travel; the Contractor must submit a request in writing to the State authorized representative referenced in your agreement to seek approval from the State for any travel paid for under this agreement. Under no circumstance shall the contractor out-of-state travel without prior authorization from the State.

These requirements will be considered complete when the State has received the deliverables identified in the scope of work, including:

- a. Facilitation of the planning group team on an as needed basis.
- b. Monthly progress report covering progress in each community, progress across all communities, and general progress against the project management plan.
- c. Evidence of Local meetings with each integrated community team at least twice a month unless otherwise indicated by the State.
- d. Facilitation, coordination, planning and implementation of statewide webinars and in-person learning sessions.
- e. Participation in bi-weekly conference calls with State staff, key leadership from pilot communities, and meetings of EQuIP facilitators.

Financial reports are due by the time the monthly invoice is submitted (see Appendix I- Required Forms).

**Milestones**

In addition to the monthly payments, milestone payments of up to \$10,000, for which the Contractor can invoice the State at any point during the Contract period, will be paid as follows:

- a. Completion of identification of target populations: \$500 per community for each cycle;
  - b. Completion of each in-person community-wide learning session or statewide webinar: \$1000/session;
  - c. Completion of measurement of intervention impact: \$500 per community per intervention;
  - d. Creation of a toolkit and materials to be used in future collaboratives, as well as an outline for use by future QI facilitators: \$1,000.
3. No benefits or insurance will be reimbursed by the State.
  4. Invoices and reports (Appendix I) should reference this contract number, contain a current date of submission and a unique invoice number. Invoices should be submitted electronically to the following State Authorized Representatives:

Erin Flynn, Senior Policy Analyst  
 Department of Vermont Health Access  
 Erin.Flynn@vermont.gov  
 Natalie Elvidge, Contract and Grants Administrator  
 Department of Vermont Health Access  
 Natalie.Elvidge@vermont.gov

5. The total maximum amount payable under this contract shall not exceed **\$123,215.00**

The State reserves the right to withhold part or all of the contract funds if the State does not receive timely documentation of the successful completion of contract deliverables.

**Budget**  
**Contract Period March 1, 2015- December 31, 2015**

Facilitation	\$92,324
Milestones	\$10,000.00

<b>Total</b>	\$102,324
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**Budget**  
**Contract Period January 1, 2016- February 29, 2016**

Facilitation	\$ 20,891
Milestones	\$0
<b>Total</b>	<b>\$20,891</b>

6. By replacing in its entirety Attachment C with the approved version dated 9/1/2015, beginning on page 7 of this amendment:
7. By replacing in its entirety Attachment E with the approved version dated 5/5/15, beginning on page 11 of this amendment:

This amendment consists of 16 pages. Except as modified by this amendment and any previous amendments, all provisions of this contract #28362 dated March 1, 2015 shall remain unchanged and in full force and effect.

By the STATE OF VERMONT

By the CONTRACTOR:

Signature: \_\_\_\_\_  
Steven Costantino, Commissioner     Date  
312 Hurricane Lane, Suite 201  
Williston, VT 05495-2087  
Phone: 802-879-5901  
Email: [steven.costantino@vermont.gov](mailto:steven.costantino@vermont.gov)

Signature: \_\_\_\_\_  
Catherine Fulton, Executive Director     Date  
132 Main Street, Suite 1  
Montpelier, VT 05602  
Phone: 802-29-2152  
Email: [catherinef@vpqhc.org](mailto:catherinef@vpqhc.org)

**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS**

1. **Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.  

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

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

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.
7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

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

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

#### Contractual Liability

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

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

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

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

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

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

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

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

- 10. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
- 11. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.



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

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

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

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

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

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

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

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

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

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

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

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

- 20. Internal Controls:** In the case that this Agreement is an award 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).
- 21. Mandatory Disclosures:** In the case that this Agreement is an award 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.
- 22. Conflict of Interest:** Party must disclose in writing any potential conflict of interest in accordance with Uniform Guidance §200.112, Bulletin 5 Section X and Bulletin 3.5 Section IV.B.

(AHS - State of Vermont – Attachment C - 9-1-2015\_rev)

**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 Program for Quality in Health Care (“Business Associate”) as of March 1, 2015. (“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.