

AMENDMENT

It is agreed by and between the State of Vermont, Department of Vermont Health Access (hereafter called the "State") and Vermont Information Technology Leaders, Inc. (hereafter called the "Contractor" and/or "VITL") that the contract on the subject of developing and implementing a population based infrastructure, effective January 1, 2016, is hereby amended August 15, 2016, as follows:

1. By deleting Section 3 (Maximum Amount) on page 1 of 24 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 \$1,828,230.

2. By deleting Section 4 (Contract Term) on page 1 of 24 of the base agreement and substituting in lieu thereof the following Section 4:

4. Contract Term. The period of Contractor's performance shall begin on January 1, 2016 and end on December 31, 2016. Work performed between January 1, 2016 (retroactive date) and the execution of the base agreement and Amendment #1 that are in conformity with Attachment A may be billed under this agreement. Contractor agrees that in exchange for the consideration of the option to bill for services performed, all terms and conditions described in this agreement shall apply to any and all services performed for or on behalf of the State. Contractor agrees that by submitting invoices, bills, or otherwise seeking compensation for services performed prior to the finalization of this agreement or signing of this agreement, contractor is agreeing to the application of all terms of this contract to that period and to that work. Contractor further agrees to defend, indemnify, and hold the State harmless for any claim, dispute, non-contractual cost or charge, or any liability whatsoever, whether in law, equity, or otherwise, which arises from or is connected to the work performed prior to the execution of this agreement. Contractor further agrees that these terms apply regardless of whether the work is accepted by the State, and regardless of whether payment is issued by the State to the Contractor for the work in question.

3. By deleting Section 9 (Subcontractor Requirements) on page 2 of 24 of the base agreement, and substituting in lieu thereof the following Section 9:

9. Subcontractor Requirements. Per Attachment C, Section 19, if the Contractor chooses to subcontract work under this agreement, the Contractor must first fill out and submit the Subcontractor Compliance Form (Appendix I – Required Forms) in order to seek approval from the State prior to signing an agreement with a third party. Upon receipt of the Subcontractor Compliance Form, the State shall review and respond within five (5) business days. A fillable PDF version of this Subcontractor Compliance Form is available upon request from the DVHA Business Office. Under no circumstance shall the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Subcontractor Compliance Form to: Meaghan Kelley: Meaghan.Kelley@vermont.gov

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

4. **By deleting Attachment A (Specifications of Work to be Performed) beginning on page 4 of 24 of the base agreement and substituting in lieu thereof the following Attachment A:**

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

There are nine tasks to be completed by Contractor under this project: Customer Support, Subject Matter Expertise, Healthfirst Gateway, Event Notification, Terminology Services, Data Quality for Designated Mental Health Agencies, Home Health Agency: Phase 1, Home Health Agency: Phase 2, and Home Health Agency: Phase 3. The Contractor will assign one or more Project Managers, to be approved by the State Program Manager, who will ensure that each of the nine tasks are completed efficiently and effectively. The Project Manager will work on individual components of the project, ensuring that resources are maximized and that activities occur in the appropriate sequence per the approved Scope Management Plan detailed below.

The Contractor shall document Customer Support activities. The approach shall be consistent with the Project Management Institute Project Management Methodologies stated in the Project Management Body of Knowledge. The Project Management Plan shall address the initiating, planning, controlling, executing, and closing processes. The Project Management Plan should at a minimum consist of the following subsidiary management plans:

- a) Scope Management Plan — this plan documents the project vision and goals, items that are in-scope and their prioritization, dependencies among the scope items, and risks associated with the removal of items from scope. The plan shall also detail optional scope items that could be initiated with State approval.
- b) Cost Management Plan — this plan shall indicate how project costs/budget shall be incurred, controlled, and reported. The plan must include the finalized cost and budget for the project in alignment with Attachment B of this agreement. Cost-related progress report formatting shall be developed and included by the Contractor, consistent with AHS requirements and approved by the State, and must include a tracking of costs to the project budget baseline.
- c) Risk Management Plan — the Contractor shall submit a Risk Assessment to the State's Program Manager within one month of the grant signing.
- d) Quality Management Plan — the Contractor's plan must be approved by the State and contain the following elements:
 - Defined quality assurance responsibilities
 - Detailed definition of all deliverables by phase and associated acceptance criteria
 - Defined deliverable review process
 - Disciplined deliverable review process
 - Regularly scheduled reviews of key project phases and milestones
 - Identify target performance areas and proposed methods of measurement and establish the baseline metrics for the agreed upon goal areas.
- e) The Schedule Management Plan – the Contractor shall develop a plan to be approved by the State that shall contain the following:

- How the project schedule shall be monitored for variances
 - What types of corrective actions shall be taken to address schedule variances during the life of the project
 - The process, roles, and responsibilities involved in making changes to the project schedule.
- f) Communication Management Plan — the Contractor shall develop a plan that must detail the varying levels and needs of the project’s stakeholders for information regarding the project, status, accomplishments, impact on stakeholders, change control, etc. The plan must detail the escalation mechanisms for issue resolution. As part of Communication Management, issues must be logged and reported to the State on a monthly basis.

The Contractor will accomplish the following tasks under this Agreement:

1) Customer and System Infrastructure Support

The Contractor shall provide customer and system infrastructure support to Community Health Accountable Care and Healthfirst members.

- a) System infrastructure support is defined as:
 - interface maintenance;
 - upgrades
 - replacement (see a.ii below).
- b) Customer support to ACO participants shall encompass:
 - patient identity management;
 - interface maintenance, upgrades and replacement; and
 - provision of a twenty-four hour, seven days a week support center.

2) Subject Matter Expertise

Subject-matter expertise related to health information integration and data transfer and storage that support the deliverables of this agreement. The Contractor will submit monthly invoices to the State for actual subject-matter expertise hours worked, inclusive of all staff expenses. The Contractor will invoice the State on an hourly basis for the following subject-matter experts and rates:

Personnel	Rate
Leadership: John Evans, Mike Gagnon, Sandy McDowell, Rob Gibson, Judith Franz, Nancy Rowden Brock, Robert Turneau, Kristina Choquette	\$200/hour
Project Managers and technical staff: TBD	\$125/hour

3) Healthfirst Gateway

The “Gateway” is a way for electronic data to be routed to Healthfirst’s analytics vendor for Care Management and Analytic processes to support patient care. The Contractor will work with Healthfirst to develop full-functionality for their analytics vendor. Full-functionality is defined as ensuring only Healthfirst’s commercial beneficiaries are selected for further analytics, the selected data only includes commercial beneficiary demographics (ADTs), lab results (Labs), clinical summaries (CCDs), and immunizations (VXUs), and the targeted data are production-ready.

4) Event Notification System

The Contractor shall provide Admission, Discharge, and Transfer (ADT) data to PatientPing, the State's event notification system (ENS) vendor (the State's contract with PatientPing can be found at <http://dvha.vermont.gov/administration/contracts>). The Contractor shall ensure the consent service design and testing are completed to support this data transfer. The Contractor shall build an interface with PatientPing to securely transfer this data.

5) Terminology Services (Phase 1 through June 2016)

The Contractor will engage a subcontractor to perform terminology services. The terminology services enhance clinical data quality in the VHIE by translating clinical data elements into standardized code sets. Specifically, these services convert the data elements from source code to standard codes readable (for commercial medical and health information technology purposes and uses) by all electronic health record systems.

The Contractor will acquire and implement terminology services hardware and software for translating labs and medications. The Contractor will launch the medication and laboratory code set standards related to these services. Phase 1 includes a one-year subscription beginning from installation of the Terminology Services hardware, hardware acquisition, VITL personnel, and system implementation.

6) Data Quality for Designated Mental Health Agencies (February 1, 2016-December 31, 2016)

The Contractor will provide 2.0 FTE eHealth Specialists to support data gathering and data quality improvement at Vermont's designated and specialized service agencies for an eleven (11) month period. The Contractor agrees to employ sufficient eHealth Specialists to perform these activities and other staff to perform the work described in this section for the entire contract period.

The Contractor shall work toward Data Quality Initiatives at designated and specialized service agencies (DA and SSA) and for long term services and supports providers to perform the following:

- a) Conduct landscape analyses as appropriate to understand how the selected DA's and SSA's are currently structured; determine the electronic health record (EHR) systems, system vendors, processes and interfaces that are currently in place to share clinical data, and determine which data elements are currently being collected, stored, and accessed. From this landscape analysis, fully understand and document the challenges that may exist with current systems and processes. These analyses will build on reports provided in 2015 including the gap analysis.
- b) The Contractor will work with each DA and SSA agency on improving data quality (structured, complete, and standards-compliant) and conduct necessary and feasible data remediation by creating an agency-specific data remediation plan to address the specific gaps identified through the gap analysis process. The plan will include recommendations to prioritize and address any issues with:
 - Site-specific workflows to support collection of required, standard data elements.
 - The standard, data element set as defined by the data dictionary being captured in an

EHR by site.

- The standard data element set being included in the ADT or CCD interface.
- Interfaces being developed to the HIE.
- The standard data elements being in the right field.
- The standard data elements being coded correctly.
- Outbound interfaces being formatted correctly.
- The standard data elements being consistent and accurate.

7) Home Health Agency VITLAccess Rollout and Interface Discovery (Phase 1: February 1, 2016-June 30, 2016)

The Contractor will implement Phase 1 of the Home Health Agency Implementation:

- a) Rollout of the VITLAccess patient portal for four (4) Home Health Agencies, which will include approximately 305 users. The Contractor will provide the following deliverable: a profile document outlining key drivers of the custom approach needed for enrollment and launch of VITLAccess in each of four (4) agencies in the most efficient and cost effective manner.
- b) Perform an interface technical discovery process with the Home Health Agencies. The Contractor will produce the following deliverable: an information technology gap remediation document that outlines the EMR vendor capability and cost, including a recommended implementation plan to connect Home Health Agencies to the Vermont Health Information Exchange (VHIE) in the most efficient and cost effective manner.

8) Home Health Agency VITLAccess Rollout and Interface Build (Phase 2: July 1, 2016-December 31, 2016)

The Contractor will implement Phase 2 of the Home Health Agency Implementation:

- a) Rollout of the VITLAccess patient portal for three (3) Home Health Agencies, which will include approximately 170 users. The Contractor will provide the following deliverable: a profile document outlining key drivers of the custom approach needed for enrollment and launch of VITLAccess in each of three (3) agencies in the most efficient and cost effective manner.
- b) Perform interface development. The Contractor will implement at least six (6) interfaces in at least five (5) Home Health Agencies. This task includes providing support for Home Health Agencies in implementing interfaces that connect their electronic medical records systems to the VHIE. The two EMR vendor systems are: McKesson Homecare and Hospice and Allscripts Homecare. This task also provides \$125,000 in funds to reimburse Home Health Agencies for the Home Health Agency interface cost. The Contractor will provide an itemized invoice for the Home Health Agency interfaces to the State for approval.

9) Home Health Agency VITLAccess Rollout and Interface Build (Phase 3: July 1, 2016-December 31, 2016)

- a) Rollout of the VITLAccess patient portal for five (5) Home Health Agencies, which will include approximately 125 users. The Contractor will provide the following deliverable: a profile document outlining key drivers of the custom approach needed for enrollment and launch of VITLAccess in each of five (5) agencies in the most efficient and cost effective manner.

- b) Perform interface development. The Contractor will implement at least four (4) interfaces in at least four (4) Home Health Agencies. This task includes providing support for Home Health Agencies in implementing interfaces connecting their electronic medical records systems to the VHIE. This task also provides \$125,000 in funds to reimburse Home Health Agencies for the Home Health Agency interface cost. The Contractor will provide an itemized invoice for the Home Health Agency interfaces to the State for approval.

Project Deliverables and Due Dates

Task	Scope	Deliverable	Due No Later Than
1) Customer and System Infrastructure Support (Note: due date in this section is commencement of the customer support)			
	CHAC Medicare, Medicaid and Commercial	Provide customer support to ACO participants and encompasses: patient identify management; interface maintenance, upgrades and replacement; continuously measuring and improving data quality; and the provision of a twenty-four hours a day, seven days a week support center. 12 months of support for Jan-Dec 2016.	January 2016
	Healthfirst Commercial	Provide customer support to ACO participants and encompasses: patient identify management; interface maintenance, upgrades and replacement; continuously measuring and improving data quality; and the provision of a twenty-four hours a day, seven days a week support center. 6 months of support for July-Dec 2016.	July 2016
2) Subject Matter Expertise			
	Provide Subject Matter Expertise	Provide Subject Matter Expertise to support the four tasks within this Agreement described in section 2 above.	July 2016
3) Gateway-Healthfirst			
	Healthfirst		
	Build Medicity functionality - Beneficiary file	A <i>Healthfirst</i> master person index is created for <i>Healthfirst</i> commercial beneficiaries	June 30, 2016
	Healthfirst Labs, ADT, CCD, VXU	Healthfirst beneficiary commercial filtering, ie. selecting the correct beneficiaries, on lab, ADT, CCD and VXU is complete and production-ready	June 30, 2016

Task	Scope	Deliverable	Due No Later Than
4) Event Notification System			
	Consent Service Design & Testing	Consent Service Implemented and Accepted	March 31, 2016
	Secure VPN Network	Secure VPN Network Established	March 31, 2016
	ADT Interface Build	ADT Interface to PatientPing Built and Accepted	March 31, 2016
5) Terminology Services			
	Phase 1		
	Hardware Acquisition	Confirmation of Hardware Acquisition	June 30, 2016
	Terminology Software Subscription	Confirmation of Software Subscription	June 30, 2016
	System Implementation	Validation of labs and medication data normalization process.	June 30, 2016
6) Data Quality for Designated Mental Health Agencies			
	Landscape analyses	Monthly updates of gaps	Included in monthly reports
	Agency-specific data remediation plan	Provide monthly plans as more DAs/SSAs are remediated	Included in monthly reports
	Gap remediation	Remediate gaps according to monthly plans	Included in monthly reports
7) Home Health Agency VITLAccess Rollout and Interface Discovery			
	VITLAccess Rollout	Rollout VITLAccess to four Home Health Agencies	June 30, 2016
	Interface technical discovery	Information technology gap remediation document	June 30, 2016
8) Home Health Agency VITLAccess Rollout and Interface Build			
	VITLAccess Rollout	Rollout VITLAccess to three Home Health Agencies	December 31, 2016
	Interface Development	Develop six interfaces in five Home Health Agencies	December 31, 2016

Task	Scope	Deliverable	Due No Later Than
9) Home Health Agency VITLAccess Rollout and Interface Build			
	VITLAccess Rollout	Rollout VITLAccess to five Home Health Agencies	December 31, 2016
	Interface Development	Develop interfaces in four Home Health Agencies	December 31, 2016

Independent Review.

The Contractor acknowledges and agrees that *under 18 VSA § 9352 the Secretary of Administration has the ability to request that DII* obtain an independent expert review of this Agreement and the services to be rendered hereunder. Such review will include, as required by law: (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; (E) an impact analysis on net operating costs for the agency carrying out the activity, and if requested; (F) a procurement negotiation advisory services contract. Upon completion of the review, and upon the State’s request, the Contractor shall meet with the State to discuss the results, and the 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. The Contractor acknowledges and agrees that if necessary and as required by the State, the Agreement and/or the applicable Statement(s) of Work will be amended to address the issues identified in the review.

Significance of the Use of Federal Monies:

To protect grant funds from federal disallowance and recovery from the State or the Contractor, the Contractor shall comply with 45 C.F.R Part 75. The Contractor is responsible for compliance to any and all other applicable federal regulations or guidelines specific to supporting the funding defined in this agreement Work invoiced by the Contractor for the purpose of expending funds against this Agreement will include only work defined in Attachment A of this Agreement.

The State reserves the right to audit the Contractor to ensure compliance with State and Federal regulations. Contractor must separate accounting between projects to the extent it has different sources of funding for projects. Any work performed outside of the direction of the State will not be reimbursed. The State contact to authorize direct work is the State’s Program Manager referenced on Page 1, Section 7 of this Agreement.

5. By deleting number 1 in Attachment B (Payment Provisions) on page 7 of 24 and substituting in lieu thereof the following:

1. The maximum payable amount under this Agreement shall not exceed \$1,828,230. 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 accepted by the State and services actually performed as specified in Attachment A, up to the maximum allowable amount specified in this agreement. The payment schedule for delivered products, or rates for services performed, are

included in this Attachment B. The State of Vermont's payment terms are Net 30 days from date of invoice approval.

6. By deleting number 3 in Attachment B (Payment Provisions) on page 7 of 24 and substituting in lieu thereof following:

	Item/Task	Units	Rate Charged per unit	Purchase Price	Total
1) Customer and System Infrastructure Support					
	CHAC	Per Member Per Member ("PMPM")	\$.073/PMPM		\$464,280
	Healthfirst	Per Member Per Member ("PMPM")	\$.073/PMPM		\$37,230
					\$501,510
2) Subject Matter Expertise					
	Subject Matter Expertise; Project Management		\$125/hour		
	Subject Matter Expertise; Leadership		\$200/hour		
					\$29,070
3) Healthfirst Gateway					
	Build Medicity functionality - beneficiary	1		\$12,650	\$12,650
	Labs, ADT, CCD, VXU	1		\$172,500	\$172,500
					\$185,150
4) ENS (January 1, 2016 – June 30, 2016)					
	Consent Service Design & Testing	1		\$26,250	\$26,250
	Secure VPN Network	1		\$5,000	\$5,000
	ADT Interface Build	1		\$26,250	\$26,250
					\$57,500
5) Terminology Services					
	System Implementation	1		\$45,000	\$45,000
	Staff time for Implementation			\$15,000	\$15,000

	Item/Task	Units	Rate Charged per unit	Purchase Price	Total
	System Implementation	1		\$45,000	\$45,000
	Staff time for Implementation			\$15,000	\$15,000
					\$120,000
6) Data Quality for Designated Mental Health Agencies					
	Data Quality: e-Health Specialists	2,000 Hours	\$75/hour		\$150,000
					\$150,000
7) Home Health Agency: Phase 1					
	VITLAccess Rollout	1		\$122,000	\$122,000
	Interface technical discovery	1		\$45,000	\$45,000
					\$167,000
8) Home Health Agency: Phase 2					
	VITLAccess Rollout	1		\$68,000	\$68,000
	VITL Interfaces	1		\$150,000	\$150,000
	Home Health Agency Interfaces	1		\$125,000	\$125,000
					\$343,000
9) Home Health Agency: Phase 3					
	VITLAccess Rollout	1		\$50,000	\$50,000
	VITL Interfaces	1		\$100,000	\$100,000
	Home Health Agency Interfaces	1		\$125,000	\$125,000
					\$275,000
TOTAL					\$1,828,230

7. By deleting Attachment C (Standard State Provisions for Contracts) on page 8 of 24 of the base agreement, and substituting in lieu thereof the Attachment C beginning on page 12 of this agreement.

8. By deleting Attachment D (Modification of Customary Provisions of Attachment C or Attachment F on page 12 of 24), and substituting in lieu thereof the Attachment D on page 18 of this amendment.
9. By adding Attachment G (Information Technology Professional Services Terms and Conditions) on page 20 of this amendment.
10. By deleting Request for Approval to Subcontract on page 24 of 24 of the base agreement, and substituting in lieu thereof the Subcontractor Compliance Form beginning on page 30 of this amendment.

This amendment consists of 30 pages. Except as modified by this amendment and any previous amendments, all provisions of this contract, (#31204) dated January 1, 2016 shall remain unchanged and in full force and effect.

STATE OF VERMONT

DEPARTMENT OF VERMONT HEALTH ACCESS

CONTRACTOR

**VERMONT INFORMATION TECHNOLOGY LEADERS,
INC.**

STEVEN COSTANTINO, COMMISSIONER DATE
NOB 1 South, 280 State Drive
Waterbury, VT 05671-1010
Phone: 802-241-0239
Email: Steven.Costantino@vermont.gov

JOHN K. EVANS, PRESIDENT & CEO DATE
1 Mill Street, Suite 249
Burlington, VT 05401
Phone: 802-861-1800
Email: JEvans@vitl.net

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

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

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

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

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

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

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

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

16. Taxes Due to the State:

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

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

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

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

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

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be

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

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

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

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

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

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

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

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

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

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

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

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

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

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

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

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

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

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

(Revised 7/1/16 - End of Standard Provisions)

ATTACHMENT D

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

1. The insurance requirements contained in Attachment C, Section 8 are hereby modified:

Notwithstanding the language in Attachment C, Paragraph 8, the following language replaces Paragraph 8 in its entirety.

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

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

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

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

\$1,000,000 Personal & Advertising Injury

\$3,000,000 First Party Breach Coverage

Professional Liability Coverage:

\$2,000,000 Each Occurrence

\$4,000,000 General Aggregate

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.

APPROVAL:

ASSISTANT ATTORNEY GENERAL

DATE: _____

ATTACHMENT G
INFORMATION TECHNOLOGY PROFESSIONAL SERVICES
TERMS AND CONDITIONS

1. OWNERSHIP AND LICENSE IN DELIVERABLES

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

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

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

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

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

all right, title and interest therein.

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

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

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

2. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

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

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

patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

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

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

(d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

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

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

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

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

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

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

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

3. SECURITY OF STATE INFORMATION.

3.1 Security Standards. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data

shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

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

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

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

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

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

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

4. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

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

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

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

- (i) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (ii) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.
- (iii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through

any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

5. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE

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

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

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

6. REMEDIES FOR DEFAULT

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

7. TERMINATION

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

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

7.2 Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to State all State Intellectual Property and State Data (including without limitation any Deliverables for which State has made payment in whole or in

part), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.

8. DESTRUCTION OF STATE DATA

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

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

To the extent Contractor's performance under this Contract involves the processing or storage of Federal tax information, 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. 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.
3. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
4. The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
5. 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.

6. 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.
7. No work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS.
8. 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.
9. 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.

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.

C. INSPECTION:

The IRS and the State shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

Department of Vermont Health Access
Subcontractor Compliance

Date: _____ Original Contractor/Grantee Name: _____
Contract/Grant #: _____ Subcontractor Name: _____
Dollar Amount: _____

Scope of Subcontracted Services:

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

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

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

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

- Subcontract requested by the State (to be completed by the State).

Signature of Subcontractor

Date

Signature of Vendor

Date

Received by DVHA Business Office

Date

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