

1. **Parties.** This is a contract for services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and PatientPing, Inc. (hereafter called "Contractor") with a principal place of business in Boston, Massachusetts. The Contractor's form of business organization is a corporation. The Contractor's local address is 330 Congress Street, Floor 4, Boston, MA, 02110. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Amended and Restated Contract.** As of November 1, 2015, the State and the Contractor originally entered into a contract relating to the provision of services to create a patient event notification system for the Vermont Health Care Innovation Project (VHCIP) under the federally funded State Innovation Model (SIM) grant (the "Original Contract"). The term of the Original Contract was set to expire on December 31, 2016, a date which has passed. However, the parties hereby agree and affirm that no expiration has occurred and that it is the intention of the parties to enter this restated agreement for the purpose of continuing the contractual relationship with all rights and responsibilities intact, without any gap in same. As of January 1, 2017, the State and the Contractor agree to amend and restate the Original Contract, as the same may have been amended, to read in whole as set forth in this first amendment to the Original Contract. The parties hereby affirm each of their respective representations and certifications made as of the date of the Original Contract. The parties agree that this amended and restated agreement shall have the effect of continuing the parties' contractual rights and responsibilities from the effective date of the Original Contract.
3. **Subject Matter.** The subject matter of this contract is reimbursement payments for the implementation of the Contractor's software service that allows health care entities that are involved in the care of patients (each, a "Partner Health Care Entity") to share (*i.e.*, send to and receive from) information with other Partner Health Care Entities pursuant to written agreements separately negotiated and entered into between Contractor and each Partner Health Care Entity (collectively, the "Provider Agreements") under which Contractor will make available such service. Detailed services to be provided by the Contractor are described in Attachment A.
4. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed **\$1,008,500**.
5. **Contract Term.** The period of Contractor's performance shall begin on **November 1, 2015** and end on **June 30, 2017**.

This amended and restated agreement has an effective date that is an earlier date than the date on which it is signed by the parties. The effective date of this amended and restated agreement shall be **January 1, 2017** and end on **June 30, 2017**. All terms and conditions described in this amended and restated agreement shall apply to any and all services performed for or on behalf of the State. The Contractor agrees that by submitting invoices, bills, or otherwise seeking compensation for services performed prior to the finalization of this amended and restated agreement or signing of this amended and restated agreement, Contractor is agreeing to and reaffirming the application of all terms of this amended and restated agreement 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 amended and restated 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.

6. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office is required.

Approval by the Secretary of Administration is required.

7. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
8. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 30 days in advance. Notwithstanding this provision, if a governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this contract are provided, is not in compliance with State and Federal law or is operating with deficiencies the State may terminate this contract immediately and notify the Contractor accordingly. Also, in the event that federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract with no obligation to pay the Contractor from State revenues.
9. **No Third Party Beneficiaries.** The parties agree that, by entering into this agreement, they do not intend to directly benefit any third parties, including Partner Health Care Entities, or to confer any private cause of action on such third parties.
10. **Attachments.** This contract consists of 60 pages including the following attachments, which are incorporated herein:

Attachment A - Scope of Work to be Performed

Attachment B - Payment Provisions

Attachment C - Standard State Provisions for Contracts and Grants

Attachment D - Modification of Customary Provisions of Attachment F

Attachment F - Agency of Human Services' Customary Contract Provisions

Appendix I - Required Forms

Appendix II - Master Services Agreement Between Contractor and Provider

Appendix III - VITL/PatientPing Contract

The order of precedence of documents shall be as follows:

- 1.) This document
- 2.) Attachment D
- 3.) Attachment C
- 4.) Attachment A
- 5.) Attachment B
- 6.) Attachment F
- 7.) Appendix I - Required Forms
- 8.) Appendix II - Master Services Agreement Between Contractor and Provider
- 9.) Appendix III - VITL/PatientPing Contract

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

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

CORY GUSTAFSON, COMMISSIONER DATE
DEPARTMENT OF VERMONT HEALTH ACCESS
NOB 1 SOUTH, 280 STATE DRIVE
WATERBURY, VT 05671
PHONE: 802-241-0246
EMAIL: CORY.GUSTAFSON@VERMONT.GOV

JAY DESAI, PRESIDENT DATE
PATIENTPING, INC.
330 CONGRESS STREET, 4TH FLOOR
BOSTON, MA 02210
EMAIL: JAY@PATIENTPING.COM

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

I. Background:

The State of Vermont has a \$45 million State Innovation Model (SIM) Testing Grant from the federal government. This grant will fund activities inside and outside of state government to implement three alternatives to fee-for-service payment:

Shared savings accountable care payments, under which a single network of medical care providers ("providers"), takes responsibility for managing the costs and quality of care/services for a group of Vermonters; Episodes of care, which provide a single reimbursement amount to a group of providers for treatment of a patient's acute or chronic care episode; and Pay-for-performance models, which incorporate the total costs and quality of services in provider compensation

As part of the SIM grant, the State is making investments in health data infrastructure. It is recognized that care coordination is challenging without real-time visibility into when and where patients are receiving care. Additionally, providers at the point-of-care struggle with incomplete knowledge of the patient's care program affiliation and care management supports. The purpose of this contract is for the State to incentivize Partner HealthCare Entities to enter into agreements with Contractor in order act as a catalyst for the utilization of this care coordination technology.

II. Contractor Services:

Contractor will solicit interest and contract with Partner Health Care Entities, and onboard, implement and train users on its web-based software service made available to Partner Health Care Entities under the Provider Agreements so that Partner HealthCare Entities can share (*i.e.*, send to and receive from) information with other Partner Health Care Entities. The Contractor will make the following services available to Partner Health Care Entities under the Provider Agreements for the fees agreed between the Contractor and each Partner Health Care Entity.

Contractor's service under the Provider Agreements shall allow Partner Health Care Entities to share critical timely data on patients when patients are receiving care. Contractor's services under the Provider Agreements are broken into two categories:

Pings: real-time notifications to Partner Health Care Entities whenever their patients receive care anywhere (ED, hospital, SNF, HHA, and elsewhere).

Point-of-Care Guidelines: information delivered to Partner Health Care Entities at the point-of-care that allows admissions coordinators to access information from the patient's full care team. Information includes the name of the patient's Accountable Care Organization ("ACO") or other care program affiliation (e.g. bundles, PCMH, other), the name/contact information of the patient's Patient Care Provider ("PCP") and other care team members, a complete visit history, and other helpful information from the patient's care team.

These two services combined are intended to produce strong network effects among Partner Health Care Entities. As Partner Health Care Entities increase visibility into the other Partner Health Care Entities caring for their patients (acute, post-acute, and others), it enables greater coordination. This in turn is intended to create an incentive for others to join, connecting a greater number of Partner Health Care Entities with patients.

The State and the Contractor expect demand for these services by a wide variety of Partner Health Care Entities in the State of Vermont. Broadly, they are categorized in two groups:

Group 1: Any Partner Health Care Entity *with a pre-defined patient panel*. Partner Health Care Entities will benefit from receiving real-time notifications under the Provider Agreements when their patients are admitted to or discharged from the acute and post-acute facilities at which they receive care. Partner Health Care Entities will also send guidelines to these points-of-care to share how those Partner Health Care Entities should work with their care teams to coordinate care for the patient. Guidelines may include an instruction to call an ACO care coordinator within 24 hours for certain high risk patients.

Examples: ACOs, Primary Care Practices, and Health Plans

Group 2: Any Partner Health Care Entity *with an episode-based patient panel*. These Partner Health Care Entities will be able to access a portal under the Provider Agreements that, upon admission to their facility, allows them to see the patient's complete visit history, care program affiliation, and care team contacts. Additionally, Partner Health Care Entities will be able to automatically notify the patient's care team outside their facility of an admission or discharge. Finally, Partner Health Care Entities will receive notifications when their discharged patients receive care at facilities outside their own for a pre-determined time period.

Examples: Hospitals, Skilled Nursing Facilities, Long-Term Acute Care Hospitals, Specialist Clinics, Home Health Agencies, Bundled Payment Risk Conveners, and other Admission Sites

III. Planned Implementation:

A. Contractor's deployment is expected to occur in three phases:

1. Contractor will enter into the appropriate agreements to establish connectivity with Vermont Information Technology Leaders (VITL) to begin receiving VITL's Admission/Discharge/Transfer ("ADT") feeds. This agreement shall be referred to as the VITL/PatientPing Contract and is found in Appendix III. The Contractor will provide the State with any amendments to this contract.

2. Contractor will receive patient rosters from early Group 1 Partner Health Care Entities (e.g. the 3 Vermont ACOs). Shortly after these rosters are configured, these providers will begin receiving notifications through its web-based service under the Provider Agreements. Contractor will receive ADT data from VITL under the VITL/PatientPing Contract and other sources, process through its engine to normalize for presentation through the PatientPing application made available under the Provider Agreements. The application contains many useful features so providers can take action on ADT notifications. Additionally, providers at the point-of-care from which ADT messages are originated will be given access to PatientPing application that allows them to access guidelines that are passed from receivers of notifications. Also included in the point-of-care application is a historical digest of clinical encounters.
3. In parallel to step 2, Contractor will begin marketing to and contracting with Group 2 Partner Health Care Entities to access the Point-of-Care Guidelines under the Provider Agreements. Contractor shall offer Welcome Summits educating Group 2 Providers about the value of joining the Contractor Community. Steadily over time, Contractor expects to contract with Group 2 Partner Health Care Entities to become Ping receivers under the Provider Agreements.

Contractor will deploy teams of sales, marketing, service, product, and community development personnel to maximize adoption of these services among Partner Health Care Entities in Vermont under the Provider Agreements. Please see Appendix II –Master Services Agreement.

B. Contractor shall develop a plan for complying with all applicable state and federal laws and regulations and the VHIE consent policy. Contractor shall not share any protected health information (PHI) until it has received approval of that plan from the State. Though subject to change according to state requirements, the parties currently anticipate that:

1. VITL will continue to collect and maintain state-wide patient consent information.
2. All ADT data inbound to VITL will be sent to Contractor under the VITL/PatientPing Contract. Additionally, VITL will regularly send Contractor list of patients who have opted-out of data sharing under the VITL/PatientPing Contract.
3. Contractor will compare opted-out patients against patients for whom notifications have been requested and screen out those patients from the service.

IV. Deliverables

1. The Contractor will provide training materials, webinar opportunities, and in-person communications to all providers subscribing to PatientPing.
2. The Contractor will provide a copy of the training materials to the State during the project deployment period.
3. The Contractor will provide a summary of the webinars offered and in-person communications.
4. The Contractor will establish a connection with VITL under the VITL/PatientPing Contract for the transfer of data from the VHIE to the PatientPing system. The Contractor will notify the State once this has occurred. The Contractor will notify the State if there are any issues or challenges with the connection within 5 days of occurrence.
5. The Contractor will notify the State each month if monthly outreach targets are not being achieved. The Contractor will develop an alternative plan with the State to achieve those targets.
6. The Contractor will work with each of Vermont's ACOs on a monthly basis to ensure aligned deployment within ACO practices.
7. The Contractor will work with Vermont's ACOs to ensure that they are able to include guidelines and other information in the pings.

V. The Contacts for this Award are as Follows:

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>	<u>Contractor</u>
Name:	Karen Sinor	Georgia Maheras	Jay Desai
Phone #:	802-241-0252	802-505-5137	617-701-7816
E-mail:	karen.sinor@vermont.gov	georgia.maheras@vermont.gov	jay@patientping.com

VI. Notices to the Parties Under this Agreement:

To the extent notices are made under this agreement, the parties agree that such notices shall only be effective if sent to the following persons as representative of the parties:

	STATE REPRESENTATIVE	CONTRACTOR
Name	Office of General Counsel	PatientPing, Inc.
Address	NOB 1 South, 280 State Drive Waterbury, VT 05671	330 Congress Street, Floor 4 Boston, MA, 02110
Email	AHS.DVHALegal@vermont.gov	jay@patientping.com

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

VII. DVHA Monitoring of Contract:

The parties agree that the DVHA official State Program Manager is *solely* responsible for the review of invoices presented by the Contractor.

VIII. Independent Review:

The Contractor acknowledges and agrees that the State is required pursuant to 3 V.S.A. § 2222 to obtain an independent expert review of this Agreement and the services to be rendered hereunder, which review shall be completed as soon as practicable after the Effective Date of this Agreement. 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, this Contract will be amended to address the issues identified in the review.

IX. 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 Request for Approval to Subcontract 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 Request for Approval to Subcontract Form, the State shall review and respond within five (5) business days. Under no circumstance shall the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Request for Approval to Subcontract Form to:

Karen Sinor, Contracts & Grants Administrator

Business Office, Contracting Unit
Department of Vermont Health Access
Karen.Sinor@Vermont.gov

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

ATTACHMENT B: PAYMENT PROVISIONS

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor shall be reimbursed for services actually provided to Partner Health Care Entities as specified in Attachment A up to the maximum allowable amount specified in this agreement. State of Vermont payment terms are Net 30 days from date of invoice. It is anticipated that each Partner Health Care Entity will pay a share of its agreed Contractor fees and the State will provide a subsidy in order to incentivize the Partner Health Care Entities to utilize the Contractor system. The following provisions specifying payments are:

1. This contract is funded by federal grants and is 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. The maximum amount payable under this contract for services and expenses shall not exceed \$1,008,500. Contractor agrees that in no event shall the combined costs for subsidies and consent policy technology development (if any), exceed \$100,000 in 2015 and \$908,500 in 2016 - 2017. Work performed between November 1, 2015 and the execution of this agreement that is in conformity with Attachment A may be billed under this agreement.
 - a. For Performance Period 2, the State of Vermont received approval for \$100,000 for this contract effective November 1, 2015. Vermont sought and received additional approval for \$400,000 for January –June 2016.
 - b. For Performance Period 3, the State of Vermont sought and received approval from CMMI in early Spring 2016 for the period July - December 2016 for the amount of \$508,500.
 - c. For Performance Period 3, the State of Vermont has sought approval from CMMI in December 2016 for a term extension period to June 30, 2017.
2. The State, using federal SIM Grant funding, will subsidize 70% of all Partner Health Care Entities costs for the term of this Contract. Contractor may offer certain promotional discounts to Partner Health Care Entities or change Partner Health Care Entities' pricing based on assessment of local market dynamics and negotiations with the Partner Health Care Entities. Contractor shall provide the State with a copy of each agreement for services that it enters into with a Partner Health Care Entity and shall notify the State immediately upon the termination of any such agreement.
3. Contractor invoices shall be submitted monthly and shall include the number of providers connected and receiving pings and the total amount billed. The invoices should be in the template provided in Appendix I. The invoices should include a deliverables achieved document (DAD), which is provided in Appendix I. On a monthly basis, Contractor will submit invoices to each Partner Health Care Entity that contracts for Contractor services. The invoices will specify the total cost of service for the month and itemize the portion of expenses to be subsidized by the State, and the portion to be paid by the Partner Health Care Entity. The overall project estimate is based on the table below:

Customer Type	Approx. Yearly Cost	Customers Signed- Up in 2016	Total Cost	State Subsidy	Provider Cost
				70%	30%
ACO	\$75,000	3	\$225,000	\$157,500	\$67,500
Post-Acute Care Providers	\$12,000	40	\$480,000	\$336,000	\$144,000
Hospitals	\$40,000	5	\$200,000	\$140,000	\$60,000
Other	\$5,000	90	\$450,000	\$315,000	\$135,000
Total Cost to Providers		138	\$1,355,000	\$948,500	\$406,500
Start-Up Costs				\$60,000	
Total				\$1,008,500	
Cost to State through June				\$504,250	

- No expenses, benefits or insurance will be reimbursed by the State.
- Invoices.** All requests for reimbursements shall be made using the Invoice – Contracts Agreements form attached, see Appendix I – Required Forms, or a similar format agreed upon by the State and Contractor. An email will be sent to the Contractor, upon request, with an invoice template in Excel format. All payments are subject to payment terms of Net 30 days. The Contractor shall submit invoices to the State quarterly. The State shall reimburse the Contractor for Subcontractor costs up to the total maximum amount of this agreement.

The Contractor shall submit each invoice along with the paid subcontractor invoice as supporting documentation for all reimbursed payments. The State shall reimburse the Contractor for Subcontractor costs up to the total maximum amount of this agreement.

Payments and/or reimbursement for travel, lodging, training/registration and other approved expenses shall only be issued after all supporting documentation and receipts are received and accepted by the State. Invoices with such expenses shall be accompanied by a Travel and Expense Form, see Appendix I: Required Forms.

Invoices should reference this contract number, contain a unique invoice number, and current date of submission. Invoices should be submitted electronically with all other reports to:

Karen Sinor, Contracts & Grants Administrator
 Business Office, Contracting Unit
 Department of Vermont Health Access
Karen.Sinor@vermont.gov

- In the event Contractor determines that a substantial level of effort is required to comply with the State's patient data sharing consent policy, Contractor shall notify the State of the Scope of Work required and the proposed cost, not to exceed \$100,000, and the parties shall come to a mutually agreeable resolution which will require an amendment of this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

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

\$1,000,000 Personal & Advertising Injury

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

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If

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

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

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

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

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

12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

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

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

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

C. Mandatory Disclosures: In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal

award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

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

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

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

16. Taxes Due to the State:

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

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

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

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or

- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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

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

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors'

workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

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

Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

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

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

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

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

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

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

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

26. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs)

("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

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

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

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

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

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

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

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

(End of Standard Provisions REVISED JULY 1, 2016)

**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:

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 **\$1,000,000** per occurrence, and **\$3,000,000** aggregate. Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

2. Reasons for Modification(s):

Professional Liability: The revised version of Attachment C, effective July 1, 2016, does not specify professional liability coverage. The base agreement contained professional liability limits that need to be included in this agreement.

1. The Intellectual Property/Work Product Ownership requirements contained in Attachment F, Section 10 are hereby modified:

- 10. Intellectual Property/Work Product Ownership.** Notwithstanding section 10 of Attachment F, (a) no term or condition thereof will apply to the web-based service offered by Contractor or its associated technology, software computer programs, source code, documentation or training materials, in each case including any updates, modifications, improvements or future versions thereto (collectively, the "Contractor Portal") or any related intellectual property rights; (b) the Contractor Portal and all related intellectual property rights shall not be subject to the assignment of ownership rights to the State of Vermont and shall remain the sole and exclusive property of Contractor; and (c) no rights are granted by Contractor in or to the Contractor Portal or under any related intellectual property rights and Contractor reserves all rights therein and thereto.

2. Reasons for Modifications:

Per Attachment F, Section 10, all intellectual property rights in any work product, including software, obtained as a condition of the agreement, used in the performance of the agreement or are prepared as a result of the services required per the agreement is owned by the State of Vermont. This contemplates the typical scenario where the State is hiring a third party vendor to develop software or other materials for the State.

For the work that will be performed under this agreement, the Contractor has its own proprietary software platform that it makes available over the Internet to participating providers. The Contractor is not custom developing this

platform for the State. Rather, the Contractor is simply making its own proprietary platform available to participating providers at a cost, which is subsidized by the funding for this agreement.

The Contractor requests this modification to clarify that the Contractor owns all intellectual property rights in its platform and is not transferring any of these rights to the State.

Approval:

Assistant Attorney General:

e-Signed by Anna Cykon
on 2017-02-16 15:44:09 GMT

Date:

February 16, 2017

State of Vermont – Attachment D – Revised AHS – 10-30-2010

**ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS
REVISED DECEMBER 31, 2016**

1. **Agency of Human Services:** The Agency of Human Services (AHS) is responsible for overseeing all contracts entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any AHS-associated party to this contract oversight, monitoring and enforcement responsibilities. Contractor agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to contract performance and interpretation, payment matters and legal compliance.
2. **Medicaid Program Contractors** (*applicable to contractors and their subcontractors paid for services under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver*):

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

Subcontracting for Medicaid Services: Notwithstanding any permitted subcontracting of services to be performed under this contract, Contractor shall remain responsible for ensuring that this contract is fully performed according to

its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Contractor in connection with the performance of this contract, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Contractor must retain the authority to revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any requirement of this contract. Contractor shall make available on request all contracts, subcontracts and service provider agreements between the Contractor, subcontractors and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

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

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

Federal Medicaid System Security Requirements Compliance: Contractor and any permitted subcontractor shall provide a security plan, risk assessment, and security controls review document within three months of the start date of this contract or any subcontract (and update it annually thereafter) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

3. **Workplace Violence Prevention and Crisis Response** (*applicable to contractors and their subcontractors whose employees or other service providers deliver social or mental health services directly to individual recipients of such services*):

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

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

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

4. **Non-Discrimination:**

Contractor shall not discriminate, and will prohibit its employees, agents, subcontractors and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972,

and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Contractor shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

Contractor further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

5. **Employees and Independent Contractors:** —

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

6. **Data Protection and Privacy:**

Protected Health Information: Contractor shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this contract. Contractor shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

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

Protection of Personal Information: Contractor agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other personal or

identifiable information that is linked or linkable to a specific person, such as date and place of birth, mother's maiden name, etc.

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

Data Breaches: Contractor shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal information identified above within 1 hour of the discovery of the breach. Contractor shall in addition comply with any other data breach notification requirements required under federal or state law.

7. **Abuse and Neglect of Children and Vulnerable Adults:**

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

Reporting of Abuse, Neglect, or Exploitation. Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Contractor and any of its agents or employees who, in the performance of services connected with this contract, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

8. **Information Technology Systems:**

Computing and Communication: Contractor shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Contractor as part of this agreement. Options include, but are not limited to:

1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

Intellectual Property/Work Product Ownership: All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement -- including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement, or are a result of the services required under this grant -- shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30-days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

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

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor's materials.

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

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

Contractor will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this agreement. The Contractor will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. The Contractor will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, the Contractor shall securely delete data

(including archival backups) from the Contractor's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

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

9. **Other Provisions:**

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

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

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

Voter Registration: When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

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

Lobbying: No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

Appendix I – REQUIRED FORMS
Invoice – Contract Agreements

Contractor:	
Address:	
State:	
Zip Code:	

Invoice #:	
Date:	
Contract #:	

Contractor Billing Contact: _____ Phone #: _____

Signature: _____

Date (if applicable)	Description of Deliverables/Work Performed	Amount
TOTAL:		

Remittance Address:

Bill to:

Business Office
 Department of Vermont Health Access
 NOB 1 South, 280 State Drive
 Waterbury, VT 05671

INVOICE PAYMENTS ARE NET 30 TERMS, UNLESS STATED OTHERWISE.

APPENDIX I – REQUIRED FORMS
Department of Vermont Health Access
Subcontractor Compliance

Date: _____
Original Contractor/Grantee Name: _____ Contract/Grant #: _____

Subcontractor Name: _____ Amount: _____

Scope of Subcontracted Services:

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

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

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

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

Signature of Subcontractor

Date

Signature of Vendor

Date

Received by DVHA Business Office

Date

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

APPENDIX I – REQUIRED FORMS
Deliverables Achieved Document



Formal Deliverable Acceptance

Prepared By		Date	
--------------------	--	-------------	--

Project Name:			
Project Phase:			
Deliverable Submitted for Acceptance:			
Were completeness and correctness criteria established?			
If yes, do the deliverables meet the criteria?			
What activities were done to ensure acceptance? (Testing, inspection, peer review, etc.).			
Overall comments:			

Approvals:
 Signature indicates acceptance of this deliverable as complete.

Role	Name and Title	Signature	Date
Project Sponsor			
Project Manager			
Business Lead			

APPENDIX II - MASTER SERVICES AGREEMENT BETWEEN CONTRACTOR AND PROVIDER

This Master Services Agreement (this "Agreement") dated as of the Effective Date (as defined below) is between PatientPing, Inc., a Delaware corporation ("PatientPing") with offices at 330 Congress St., Boston, MA 02210, and the company listed below ("Customer").

CUSTOMER INFORMATION:	
Customer:	Phone:
Address:	E-Mail:
INITIAL TERM:	RENEWAL TERMS:
Twelve (12) months.	Twelve (12) months each.
ATTACHMENTS (this Agreement consists of this Order Form and the following attachments):	
Standard Terms and Conditions, Business Associate Agreement	
DESCRIPTION OF SERVICES AND FEES:	
PatientPing will provide Customer with a software service that allows Customer to share (i.e., send to and receive from) information with other health care entities that are involved in the care of patients for whom Customer is delivering services (each, a " <u>Partner Health Care Entity</u> "). PatientPing will perform the following services (" <u>PatientPing Services</u> ") for the corresponding fees.	
SERVICES	FEES*
1. Roster Upload: Load Customer's patient roster that is delivered by Customer to PatientPing into PatientPing's secure web-based location as such patient roster is updated and delivered. Patient roster will be delivered electronically, including but not limited to the following mechanisms: a direct interface with Customer systems or through secure transfer of patient roster.	No cost
2. Send Pings: Software service enabling Customer to send and otherwise share certain information with Partner Health Care Entities. Information sent to Partner Health Care Entities will include but not be limited to, information contained within Customer's Health Level Seven Admissions, Discharge, and Transfer messages or as collected through PatientPing web-based software to which Customer will have access.	No cost
3. Receive Guidelines: Customer will have access to web application that presents information on patients receiving care at Customer's care facilities including, but not limited to, names of Partner Health Care Entities providing care for patients, record of admissions and discharges indicating historical visits at Partner Health Care Entities, and Care Guidelines offered by Partner Health Care Entities.	No cost (limit to 5 users; additional user fees apply)
4. Send Guidelines: Customer will have access to software service that allows Customer to configure and push Care Guidelines and other pertinent information from Customer to Partner Health Care Entities. Care Guidelines defined as template instructions that Customer can configure to be received by Partner Health Care Entities.	No cost
5. Receive Pings: Software service enabling Customer to access notifications when patients visit Partner Health Care Entities defined as a notification each time that a Customer patient is admitted or discharged from, or deceased at the Partner Health Care Entity.	One-time set-up fee: \$5,000. Greater of \$1,000 per month, or \$0.10 per month per patient on roster for which Customer is receiving notifications.

	<p>First five (5) authorized User accounts billed at \$150 per month; each additional user will be billed according to the following schedule:</p> <ul style="list-style-type: none">• 6-20 authorized users: \$450 per month• 21-50 authorized User accounts: \$750 per month• 51-75 authorized User accounts: \$900 per month• 76+ authorized User accounts: \$10.50 per account
<p>*Pricing set forth above represents Customer's portion of service fee, which represents thirty percent (30%) of total fees to be invoiced by PatientPing. The remaining seventy percent (70%) will be invoiced to the State of Vermont, pursuant to the arrangement set forth in the 2016 fee schedule of the Master Services Agreement between PatientPing and the State of Vermont with an Effective Date of _____. For the avoidance of doubt, under this arrangement, if Customer were to provide PatientPing with a roster of 100,000 members, PatientPing would invoice Customer \$3,000 (30% of fees) and would separately invoice the State of Vermont \$7,000 (70% of fees). This applies to all fees set forth above.</p>	
<p>PatientPing may from time to time offer additional services to Customer for additional fees, and upon mutual written agreement of the parties, the above description of services and fees will be modified to provide for those services at the applicable fees.</p>	

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in their respective names and on their behalf as of the date of the last signature set forth below (the "Effective Date").

PATIENTPING, INC.

CUSTOMER:

By: _____

Name: Jay Desai

Title: President

Date:

By: _____

Name:

Title:

Date:

STANDARD TERMS AND CONDITIONS

IN CONSIDERATION OF THE MUTUAL PROMISES BELOW AND OTHER GOOD AND VALUABLE CONSIDERATION THE SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

DEFINITIONS

The following terms, when used in this Agreement will have the following meanings:

"Authorized User" means any employee, contractor or agent of Customer authorized by Customer to access and use the PatientPing Services solely using a user identifier and password provided or registered to Customer by PatientPing.

"Business Associate Agreement" means the Business Associate Agreement by and between the parties attached hereto.

"Confidential Information" means, subject to the exceptions set forth below, any information or data, regardless of whether it is in tangible form, including by way of example Customer Data, disclosed by either party (the **"Disclosing Party"**) that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the other party (the **"Receiving Party"**); provided, however, that subject to the following sentence (a) reports and/or information related to or regarding a Disclosing Party's business plans, strategies, and current and prospective customers will be deemed Confidential Information of the Disclosing Party; (b) the PatientPing Services and Documentation will be deemed Confidential Information of PatientPing and (c) the Customer Data will be deemed Confidential Information of Customer, in each case even if not so marked or identified. "Confidential Information" will not include any information which (a) publicly known through no fault of Receiving Party; (b) was properly known to Receiving Party, without restriction, prior to disclosure by the Disclosing Party; (c) was properly disclosed to Receiving Party, without restriction, by another person with the legal authority to do so; or (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

"Customer Data" means data and other material supplied directly to PatientPing by or on behalf of Customer in the course of receiving or using PatientPing Services.

"Documentation" means the printed and digital instructions, on-line help files, technical documentation and user manuals for the PatientPing Services, if any.

SUBSCRIPTION SERVICES; PROFESSIONAL SERVICES

Provision of Services. PatientPing will make the PatientPing Services available to Customer pursuant to this Agreement during the Subscription Period (as defined below). Subject to the terms and conditions of this Agreement, PatientPing hereby grants Customer a non-exclusive right to access and use the PatientPing Services and Documentation during the Subscription Period solely for its internal business purposes.

Customer Limitations. The access right granted in Section 0 is subject to the following restrictions: (a) the PatientPing Services will be used or accessed only by Authorized Users; (b) Customer will not provide a user identifier or password to access PatientPing Services to any party or person other than Authorized Users; (c) Customer will not use PatientPing Services to process data on behalf of third parties; (d) Customer will not reverse engineer, decompile, disassemble or otherwise create, attempt to create, or permit or assist any third party to create a source code version of the PatientPing Services; (e) Customer will not transfer, distribute, sell, resell, lease, sublease, license, sub-license, assign or scrape PatientPing Services or the license or subscription granted by this Agreement or otherwise offer PatientPing Services for use on a service bureau, outsourced, or value added basis; (f) Customer will not use PatientPing Services or Documentation in any manner that will use, make, prepare derivative works of, or distribute, unauthorized copies of third party copyrighted material; (g) Customer will not use the PatientPing Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third party privacy rights; and (h) Customer will not use the PatientPing Services to store or transmit viruses or other harmful or malicious code, files, scripts, agents or programs.

Customer Responsibilities. Customer will (a) be responsible for each Authorized User's compliance with this Agreement and use of the PatientPing Services and Documentation; (b) be solely responsible for the accuracy, quality, integrity and legality of Customer Data; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the PatientPing Services and Documentation and notify PatientPing promptly of any such unauthorized access or use; and (d) use the PatientPing Services only in accordance with the Documentation and applicable laws and regulations.

Professional Services. From time to time, Customer may require certain services of PatientPing as are described on statements of work which are executed by both parties pursuant to this Agreement (the "Statements of Work"), each of which will expressly reference this Agreement. Such services will be provided in accordance with the provisions of this Agreement and the applicable Statement of Work. Each Statement of Work will contain a description of the tasks to be performed. Also included, if applicable, will be a schedule of payments and payment terms. The applicable Statement of Work may include such additional terms and conditions as the parties may wish to include. In the event of a conflict between any term or condition of this Agreement and any Statement of Work, the applicable term or condition of this Agreement will govern. Upon execution of any Statement of Work, the terms and conditions of such Statement of Work are hereby incorporated into and become part of this Agreement. Customer will pay PatientPing the fees set forth in such Statement of Work in accordance with the terms therein.

SUPPORT SERVICES

Telephone support consists of telephone contact at any time. Such support will include the opportunity to speak with a member of PatientPing's staff about PatientPing Services capabilities, maintenance and use of the PatientPing Services, the identification and reporting of reproducible errors and problems with PatientPing Services.

1. FEES; TAXES

1.1 **Fees.** Customer will pay the fees set forth in and in accordance with the Order Form. Except as otherwise specified herein or in the Order Form, (a) fees are quoted and payable in United States dollars; and (b) payment obligations are non-cancelable and fees paid are non-refundable. Failure to pay any fees under this Agreement will result in an interruption of service. All fees and payments under this Agreement will be invoiced or billed in advance on a monthly basis. All fees and payments will be due and payable thirty (30) days after the invoice date without any withholding, deduction, offset, setoff or other charge. Without limiting any other remedies available to PatientPing, any payments or portions thereof due hereunder which are not paid on the date such payments are due under this Agreement will bear interest at a rate of two percent (2%) or the maximum rate permitted by law (whichever is less), calculated on the number of days such payment is delinquent, compounded monthly.

1.2 **Net of Taxes.** All amounts payable by Customer to PatientPing hereunder are exclusive of any sales, use and other taxes or duties, however designated, including without

limitation, withholding taxes, royalties, know-how payments, customs, privilege, excise, sales, use, value-added and property taxes (collectively "Taxes"). Customer will be solely responsible for payment of any Taxes, except for those taxes based on the income of Patient Ping. Customer will not withhold any Taxes from any amounts due to PatientPing.

OWNERSHIP AND CONFIDENTIALITY

PatentPing's Ownership Rights. PatientPing exclusively owns all right, title and interest in and to the PatientPing Services and Documentation. Except for the express access right granted hereunder, PatientPing reserves all rights, title and interests in and to the PatientPing Services, Documentation and PatientPing's Confidential Information.

Feedback. Customer may from time to time provide suggestions, comments or other feedback ("Feedback") to PatientPing with respect to the PatientPing Services. PatientPing will be free to use, disclose, reproduce and otherwise exploit the Feedback as it sees fit, and may proceed with the development of enhancements, new features or functionality based on such Feedback at its sole discretion.

Customer Data Ownership Rights; Usage Data. The Customer Data will be owned by Customer. Customer hereby grants to PatientPing a non-exclusive, royalty-free, fully paid up, and worldwide license to copy, modify (including the right to create derivative works of), display and use Customer Data solely in connection with performing PatientPing Services. In addition, PatientPing may collect and utilize data and other information, including without limitation Customer Data, in aggregated or other de-identified form, derived from use and performance of the PatientPing Services and its related products and services under this Agreement for purposes of developing, delivering and enhancing PatientPing's products and services and for internal evaluation of trends, system usage, security threats, intrusions and other similar internal purposes.

Confidentiality. The Receiving Party acknowledges that the Confidential Information of the Disclosing Party constitutes valuable trade secrets and proprietary information of the Disclosing Party, and the Receiving Party agrees that it will use the Confidential Information of the Disclosing Party solely in accordance with the provisions of this Agreement and it will not disclose, or permit to be disclosed, the same directly or indirectly, to any third party without the Disclosing Party's prior written consent, except as otherwise permitted hereunder. Nothing in this Section 0 is intended to restrict or otherwise limit the exercise by the Receiving Party of the rights and licenses granted to it under this Agreement; provided that the Receiving Party uses reasonable measures to protect the confidentiality

and value of the Disclosing Party's Confidential Information. Notwithstanding any provision of this Agreement, the Receiving Party may disclose the Confidential Information of the Disclosing Party, in whole or in part (a) to its employees, officers, directors, attorneys, auditors, financial advisors and/or subcontractors who have a need to know and are legally bound to keep such information confidential by confidentiality obligations consistent with those of this Agreement; or (b) as reasonably deemed by the Receiving Party to be required by law (in which case the Receiving Party will provide the other with prior written notification thereof, will provide the Disclosing Party with the opportunity to contest such disclosure, and will use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law); and, in the case of PatientPing as the Receiving Party, to Partner Health Care Entities to perform PatientPing's obligations under this Agreement. The Receiving Party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section, the Disclosing Party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement. Upon the termination of this Agreement, the Receiving Party agrees to promptly return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party that is in the possession of the Receiving Party and to certify the return or destruction of all such Confidential Information and embodiments.

Customer Data. Customer will be solely responsible for the content, accuracy, completeness and quality of any and all Customer Data, including without limitation Protected Health Information (or "PHI", as such term is defined in the Health Insurance Portability Accountability Act of 1996) and other data concerning Customer's patients and/or business operations, provided through the PatientPing Services or otherwise provided by Customer, including any data produced by the PatientPing Services for Customer or from Customer Data. Customer agrees that PatientPing may access, share and/or otherwise use such Customer Data only as permitted under this Agreement and, with respect to PHI, as otherwise specified in the Business Associate Agreement.

REPRESENTATIONS, WARRANTIES AND EXCLUSIONS

Each party represents, warrants and covenants to the other party as follows: (a) it is a corporation organized and existing under the laws of its jurisdiction of incorporation with full power and authority to enter into and perform this Agreement; (b) this Agreement has been duly authorized by all necessary corporate

action and constitutes the binding obligation of such party enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy laws or other laws affecting the rights of creditors generally; (c) the person(s) executing this Agreement on its behalf has actual authority to bind it to this Agreement; (d) such party's execution and performance of this Agreement does not and will not violate or conflict with any provision of such party's governing corporate instruments or of any commitment, agreement or understanding that such party has or will have to or with any person or entity; and (e) it will comply with all laws (including federal, state and local laws and regulations, orders and ordinances) now or hereafter enacted, of any jurisdiction in which performance occurs or may occur hereunder. PatientPing further represents, warrants and covenants to Customer that the PatientPing Services materially conform to the Documentation.

PatientPing Exclusions; Disclaimer. CUSTOMER EXPRESSLY AGREES THAT ITS USE OF THE PATIENTPING SERVICES IS AT ITS SOLE RISK AND THAT THE PATIENTPING SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND FROM PATIENTPING. PATIENTPING FURTHER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. PATIENTPING DOES NOT GUARANTEE THAT THE PATIENTPING SERVICES WILL MEET ALL OF CUSTOMER'S REQUIREMENTS OR THAT THE PATIENTPING SERVICES WILL OPERATE AT ALL TIMES IN AN UNINTERRUPTED OR ERROR FREE FASHION.

INDEMNIFICATION

Indemnification by PatientPing. Subject to Section 0 below, PatientPing will defend Customer against any claim, demand, suit or proceeding ("Claim") made or brought against Customer by a third party alleging that the use of the PatientPing Services as permitted hereunder infringes or misappropriates a third party copyright, United States patent, trade secret or trademark and will indemnify Customer for any damages finally awarded against, and for reasonable attorney's fees incurred by, Customer in connection with any such Claim. If the use of the PatientPing Services by Customer has become, or in PatientPing's opinion is likely to become, the subject of any claim of infringement, PatientPing may at its option and expense (a) procure for Customer the right to continue using and receiving the PatientPing Services as set forth hereunder; (b) replace or modify the PatientPing Services to make it non-infringing so long as the PatientPing Services has at least equivalent functionality; (c) substitute an equivalent for the PatientPing Services or (d) if options (a)-(c) are not reasonably

practicable, terminate this Agreement. PatientPing will have no liability or obligation under this Section 0 with respect to any Claim if such Claim is caused in whole or in part by (i) compliance with designs, guidelines, plans or specifications provided by Customer and incorporated into the PatientPing Services; (ii) use of the PatientPing Services by Customer not in accordance with this Agreement; (iii) modification of the PatientPing Services by any party other than PatientPing without PatientPing express consent; (iv) use of Customer Data in accordance with this Agreement; or (v) the combination, operation or use of the PatientPing Services with other applications, portions of applications, product(s), services, hardware or other materials where the PatientPing Services would not by itself be infringing. THIS SECTION 0 STATES PATIENTPING'S ENTIRE AND EXCLUSIVE LIABILITY AND OBLIGATION, AND CUSTOMER'S EXCLUSIVE REMEDY (AT LAW OR IN EQUITY), WHETHER STATUTORY, CONTRACTUAL, EXPRESS, IMPLIED OR OTHERWISE, FOR ANY CLAIM OF ANY NATURE RELATED TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY.

Indemnification by Customer. Subject to Section 0 below, Customer will defend PatientPing against any Claim made or brought against PatientPing by a third party arising out of (a) any of the circumstances stated in Section 0(i) - (v); (b) any use or operation of, or access to the PatientPing Services by Customer, excluding Claims caused by PatientPing's indemnification obligations pursuant to Section 0 above; (c) any breach of this Agreement, including the Business Associate Agreement, by Customer; or (d) the negligence, recklessness or willful misconduct of Customer and, in each instance, will indemnify PatientPing for any damages finally awarded against, and for reasonable attorney's fees incurred by, PatientPing in connection with any such Claim.

Requirements. The indemnification obligations under Sections 0 and 0 above are contingent upon (a) the indemnified party promptly notifying the indemnifying party of the applicable Claim, (b) the indemnifying party having the sole and exclusive authority to defend and/or settle any such Claim (provided that the indemnifying party may not settle any such Claim without the indemnified party's prior written consent, which will not be unreasonably withheld, unless it unconditionally releases the indemnified party of all liability) and (c) the indemnified party cooperates with the indemnifying party in connection therewith.

LIMITATION OF LIABILITY

EXCEPT FOR DAMAGES ARISING FROM A PARTY'S BREACH OF SECTION 0 AND A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 0, (A) UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT OR OTHERWISE, WILL EITHER PARTY BE LIABLE TO THE OTHER

PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST DATA OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES, EVEN IF A REPRESENTATIVE OF SUCH PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES AND (B) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY DIRECT DAMAGES, COSTS OR LIABILITIES IN EXCESS OF THE AMOUNTS PAID OR PAYABLE BY CUSTOMER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE INCIDENT OR CLAIM. THE PROVISIONS OF THIS SECTION ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THE LIMITATIONS SET FORTH HEREIN IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT.

TERM; TERMINATION

Term. The term of this Agreement will commence on the Effective Date and continue for the Initial Term. Thereafter, the term of this Agreement will automatically renew for successive Renewal Terms (together with the Initial Term, the "Subscription Period"). The pricing during any Renewal Term will be the same as that during the immediately prior term unless PatientPing has given Customer written notice of a pricing increase at least ninety (90) days prior to the end of such prior term, in which case the pricing increase will be effective upon renewal and thereafter.

Termination. In addition to any rights of a party to terminate this Agreement as specifically provided in any other section of this Agreement, each party may terminate this Agreement upon written notice at any time upon ninety (90) days written notice. In no event will any termination relieve Customer of the obligations to pay any fees payable to PatientPing for the period prior to the effective date of termination.

Survival. Upon termination or expiration of this Agreement all rights and obligations will immediately terminate except that Customer's obligation to pay amounts accrued under this Agreement but that are not yet paid and the provisions of Sections 0, 0, 0, 0, 0 and 0 will survive the termination or expiration of this Agreement or the Subscription Period for any reason whatsoever.

Destruction of Customer Data. Upon request by Customer made within thirty (30) days after the effective date of any termination of this Agreement, PatientPing will delete all PHI in its systems or otherwise in its possession or under its control. Notwithstanding the foregoing, PatientPing may continue to

utilize data and other information in aggregated or other de-identified form as collected in accordance with Section 0 above.

Right to Suspend. PatientPing may temporarily suspend Customer's or any Authorized User's access to any portion of the PatientPing Services if PatientPing reasonably determines that: (a) there is a threat or attack on the PatientPing Services or other event that may create a risk to the PatientPing Services, Customer or any other customer of PatientPing; (b) Customer's use of the PatientPing Services or any Customer Data disrupts or poses a security risk to the PatientPing Services or any other PatientPing customer; or (c) Customer is using the PatientPing Services for fraudulent or illegal activities (collectively, "**Service Suspensions**"). PatientPing will provide written notice of any Service Suspension to Customer and provide updates regarding resumption of PatientPing Services following any Service Suspension. PatientPing will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Customer may incur as a result of any Service Suspension.

GENERAL

Patient Data. Although PatientPing may provide interfaces that can be configured by Customer to electronically upload patient data, Customer acknowledges and agrees that Customer and Authorized Users are solely responsible for determining which data is uploaded into the registry and repository and for obtaining any necessary patient consents and authorizations in order to include the applicable patient data into the registry and repository. Customer further acknowledges that PatientPing does not verify the nature or status of any patient data being used, disclosed, accessed or transferred as part of the PatientPing Services. Authorized Users must make independent and informed decisions in full compliance with all applicable law prior to initiating such electronic uploads of patient information and specifically must not upload any patient data (a) for which the patient has opted out of being uploaded into the registry and repository; and/or (b) for which applicable law requires a specific patient authorization or consent, where such authorization or consent has not been obtained by Customer and/or PatientPing, as applicable. Without limiting the generality of the foregoing, Customer will not use, disclose, access, upload and/or transfer as part of the PatientPing Service, any AIDS/HIV, mental health, sexual health, addiction diagnoses or treatments or related patient data or other patient data for which the provider is required to acquire additional authorizations and/or separate written consents. Customer is solely responsible for training Authorized Personnel on the patient opt-in or opt-out procedures as it relates to the PatientPing Services.

Publicity. Each party agrees that it will not, without prior written consent of the other, use in advertising, publicity or otherwise the name or any trade name, trademark, trade device, service mark, brand name, symbol or any other identification or any abbreviation, contraction or simulation thereof of the other or refer to the existence of this Agreement in press releases, advertising, or materials distributed to prospective customers.

Assignment. Neither party may assign or transfer this Agreement in whole or in part without the prior written consent of the other party, except that either party may assign or transfer this Agreement without the written consent of other party to a corporation or other business entity succeeding to all or substantially all the assets and business of the assigning party to which this Agreement relates. Any attempted assignment, delegation or transfer by an assigning party in violation hereof will be null and void. Subject to the foregoing, this Agreement will be binding on the parties and their successors and assigns.

Amendment; Waiver. No amendment or modification to this Agreement, nor any waiver of any rights hereunder, will be effective unless assented to in writing by both parties. Any such waiver will be narrowly construed to apply only to the specific provision and under the specific circumstances for which it was given, and will not apply with respect to any repeated or continued violation of the same provision or any other provision. Failure or delay by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision

Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. For purposes hereof, a facsimile or electronic copy (including a portable data format (PDF) copy) of this Agreement will be deemed to be an original.

Relationship. Nothing contained herein will in any way constitute any association, partnership, agency, employment or joint venture between the parties, or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties. Neither party will represent to the contrary, either expressly, implicitly or otherwise.

Unenforceability. If a court of competent jurisdiction determines that any provision of this Agreement is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement

will remain in full force and effect and bind the parties according to its terms. To the extent any provision cannot be enforced in accordance with the stated intentions of the parties, such provision will be deemed not to be a part of this Agreement.

Governing Law. All disputes, claims or controversies arising out of this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its rules of conflict of laws. Each of the parties hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States of America located in the Commonwealth of Massachusetts for any litigation among the parties arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, waives any objection to the laying of venue of any such litigation in such courts and agrees not to plead or claim in any such court that such litigation brought therein has been brought in any inconvenient forum or that there are indispensable parties to such litigation that are not subject to the jurisdiction of such court.

Notices. All notices under this Agreement will be in writing and will reference this Agreement. Notices will be deemed given when: (a) delivered personally; (b) sent by confirmed facsimile or e-mail; (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the addresses set forth on the first page of this Agreement or such other addresses designated pursuant to this Section 0.

Subcontractors. Customer hereby consents to PatientPing's use of subcontractors and agents in the performance of its

obligations hereunder; provided that PatientPing will remain fully liable for the acts and omissions of its agents and subcontractors as if performed by PatientPing.

Entire Agreement. This Agreement, including the Order Form and each attachment referred to in such Order Form, constitutes the entire agreement between the parties with respect to the subject matter hereof. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations. In the event of any conflict between the terms of the Order Form and any attachment referred to in such Order Form, the terms of the Business Associate Agreement will prevail, followed by the terms of the Order Form, followed by these Standard Terms and Conditions. This Agreement may not be modified or waived, in whole or part, except in writing and agreed to by an officer or duly authorized representative of both parties.

Titles. All article and section titles herein are provided for general information and reference only. Thus, the subject matter in each section herein will not be construed by reference to the title nor will the scope of section be limited in any manner based on the title of that section.

Force Majeure. Neither party will be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control, including, without limitation, earthquake, flood, or other natural disaster, act of God, labor controversy, civil disturbance, terrorism, war (whether or not officially declared) or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree.

[Remainder of page intentionally left blank.]

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement") by and between the undersigned HIPAA Covered Entity (the "Covered Entity") and PatientPing, Inc. ("Business Associate", and Covered Entity and Business Associate, collectively, the "Parties" and, individually, a "Party") is effective upon the date of the last signature on the signature page hereto (the "Effective Date").

RECITALS

WHEREAS, the Parties have entered into a separate services agreement titled Masters Services Agreement (the "Services Agreement"), pursuant to which the Business Associate may provide certain services ("Services") to Covered Entity;

WHEREAS, as a result of providing the Services, Business Associate may have access to certain Protected Health Information (defined below) and Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Rules (defined below); and

WHEREAS, the Parties wish to address the requirements of the HIPAA Rules and ensure that Business Associate will establish appropriate safeguards, including without limitation certain administrative requirements with respect to such Protected Health Information.

NOW, THEREFORE, in consideration of the foregoing and the covenants and promises contained in this Agreement and the Services Agreement, the Parties agree as follows.

AGREEMENT

1. DEFINITIONS

1.1 **Terms Defined in the HIPAA Rules.** The following terms used in this Agreement will have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

1.2 **Business Associate.** "Business Associate" will generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, will mean PatientPing, Inc.

1.3 **Covered Entity.** "Covered Entity" will generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this Agreement, will mean the entity identified on the signature page hereto.

1.4 **HIPAA Rules.** "HIPAA Rules" will mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

1.5 **Party.** "Party" means each party to this Agreement.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

2.1 Business Associate agrees to:

- (a) Not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement;

- (c) Report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware;
- (d) Request, Use and disclose only the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure;
- (e) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- (f) Make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
- (g) Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
- (h) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
- (i) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- (j) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

3. OBLIGATIONS AND RESPONSIBILITIES OF COVERED ENTITY

- 3.1 Covered Entity will comply fully with all of its obligations under the HIPAA Rules.
- 3.2 Covered Entity will provide Business Associate only with minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use or disclosure.
- 3.3 Covered Entity will notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's Use or disclosure of Protected Health Information.
- 3.4 Covered Entity will notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's Use or disclosure of Protected Health Information.
- 3.5 Covered Entity will notify Business Associate in writing of any restriction on the Use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's Use or disclosure of Protected Health Information.
- 3.6 Covered Entity will not request Business Associate to Use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, provided, however, that this provision will not be interpreted to restrict Business Associate from using Protected Health Information for Data Aggregation or management and administration and legal responsibilities of the Business Associate, as permitted by this Agreement.

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 4.1 Business Associate may only use or disclose Protected Health Information as necessary to perform the services as described in the Services Agreement.
- 4.2 Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate as (1) Required By Law and/or (2) if Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used, or further disclosed only as Required by Law or for the purpose or which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of such information has been breached.
- 4.3 Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth in Sections 4.2, 4.4 and 4.5.
- 4.4 Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 4.5 Business Associate may provide Data Aggregation services relating to the Health Care Operations of the Covered Entity.
- 4.6 Business Associate may de-identify the Protected Health Information in accordance with section 164.502(d) of the HIPAA Rules and use, modify and disclose such de-identified data for any legal purpose.

5. TERM AND TERMINATION

- 5.1 **Term.** The term of this Agreement will be effective as of the Effective Date and will terminate upon the earlier of (a) termination of the Services Agreement or (b) termination of this Agreement under Section 5.2 or 5.3 below.
- 5.2 **Termination for Cause by Covered Entity.** Notwithstanding any provision in this Agreement to the contrary, a breach by Business Associate of any provision of this Agreement, as determined by Covered Entity, will constitute a material breach of this Agreement and any applicable sections of the Services Agreement. Upon Covered Entity's knowledge of a breach or violation of this Agreement by Business Associate, Covered Entity will require Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or if no cure or end of violation is possible, Covered Entity will immediately terminate this Agreement (and applicable sections of the Services Agreement) upon written notice to Business Associate.
- 5.3 **Termination for Cause by Business Associate.** Upon Business Associate's knowledge of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under this Agreement or other arrangement, Business Associate must take reasonable steps to cure the breach or end the violation. If Covered Entity does not cure the breach or end the violation, Business Associate will immediately terminate this Agreement (and any applicable sections of the Services Agreement) upon written notice to Business Associate.
- 5.4 **Obligations Upon Termination.**
- (a) Except as provided in subsection (b) and (c) below, upon termination of this Agreement for any reason, Business Associate will return or destroy all Protected Health Information in its possession, or in the possession of subcontractors or agents of Business Associate. For clarity, Business Associate will retain no copies of the Protected Health Information.

- (b) In the event that the Parties determine that returning or destroying the Protected Health Information is infeasible, Business Associate will extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible. The obligations of this subsection (b) only last as long as Business Associate maintains or retains any Protected Health Information.
- (c) For the avoidance of doubt, Business Associate's obligations to return and/or destroy the Protected Health Information as set forth in Section 5.4(a) will not apply to any Protected Health Information which has been de-identified in accordance with the requirements of the HIPAA Rules and Covered Entity acknowledges and agrees that Business Associate will be free to continue to use de-identified data without restriction after the termination or expiration of this Agreement.

5.5 **Survival.** Section 5 and 6 of this Agreement will survive any termination of this Agreement.

6. MISCELLANEOUS

6.1 **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section in effect or as amended.

6.2 **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules

6.3 **Interpretation.** Any ambiguity in this Agreement will be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules.

6.4 **Complete Integration.** This Agreement, along with the applicable provisions in the Services Agreement, constitute the entire agreement between the Parties and supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written, unless expressly incorporated herein, related to the subject matter of the Agreement. Unless expressly provided otherwise herein, this Agreement may not be modified unless in writing signed by the duly authorized representatives of both Parties. If any provision or part thereof is found to be invalid, the remaining provisions will remain in full force and effect.

6.5 **No Third Party Beneficiaries.** Except as expressly provided for in the HIPAA Rules, there are no third-party beneficiaries to this Agreement. Business Associate's obligations are to Covered Entity only.

6.6 **Successors and Assigns.** Neither Party may assign or transfer this Agreement in whole or in part without the prior written consent of the other Party, except that either Party may assign or transfer this Agreement without the written consent of other Party to a corporation or other business entity succeeding to all or substantially all the assets and business of the assigning Party to which this Agreement relates. Any attempted assignment, delegation or transfer by an assigning Party in violation hereof will be null and void. Subject to the foregoing, this Agreement will be binding on the Parties and their successors and assigns.

6.7 **Governing Law and Venue.** All disputes, claims or controversies arising out of this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its rules of conflict of laws. Each of the parties hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States of America located in the Commonwealth of Massachusetts for any litigation among the parties arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, waives any objection to the laying of venue of any such litigation in such courts and agrees not to plead or claim in any such court that such litigation brought therein has been brought in any inconvenient forum or that there are indispensable parties to such litigation that are not subject to the jurisdiction of such court.

6.8 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. For purposes hereof, a facsimile or electronic copy (including a portable data format (PDF) copy) of this Agreement will be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have caused this Business Associate Agreement to be duly executed in their respective names and on their behalf as of the date of the last signature set forth below.

PATIENTPING, INC.

COVERED ENTITY:

(entity name of Covered Entity)

By: _____
Name: Jay Desai
Title: President
Date:

By: _____
Name:
Title:
Date:

APPENDIX III – VITL/PATIENTPING CONTRACT

ADT DATA FEED AGREEMENT

This ADT Data Feed Agreement (this "Agreement") dated as of the Effective Date (as defined on the signature page hereto) is between PatientPing, Inc., a Delaware corporation ("PatientPing") with offices at 330 Congress Street, Floor 4, Boston, MA 02210, and Vermont Information Technology Leaders, Inc. ("VITL"), a Vermont corporation with offices at 1 Mill Street, Suite 249, Burlington, VT05401.

WHEREAS, PatientPing and the State of Vermont, Department of Vermont Health Access ("State") wish to jointly make available certain services that PatientPing will provide to health care entities located in the State of Vermont ("Providers");

WHEREAS, VITL maintains the exclusive Vermont Health Information Exchange ("VHIE"),

pursuant to which VITL receives certain patient data for patients receiving healthcare in the State of Vermont;

WHEREAS, VITL wishes to make available and deliver to PatientPing ADT patient data, including patient demographic and encounter information ("ADT Data"), and PatientPing wishes to receive the ADT Data, such that PatientPing may provide the PatientPing Services (as described on Exhibit A attached hereto) to Providers as contemplated by the State Agreement and pursuant to agreements entered into between PatientPing and each such Provider (each, a "Provider Agreement"); and

WHEREAS, in connection therewith, VITL wishes to provide, and PatientPing wishes to receive, the services set forth on Exhibit A attached hereto (the "VITL Services").

NOW THEREFORE, in consideration of the mutual promises below and other good and valuable consideration the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

The following terms, when used in this Agreement will have the following meanings:

1.1 "PatientPing Services Revenue" means any payments that PatientPing actually receives from Providers in consideration for providing the PatientPing Services to such Providers.

1.2 "Applicable Law" means all applicable federal, state and local laws, statutes, acts, ordinances, rules, codes, standards, regulations and judicial or administrative decisions promulgated by any governmental agency, including the State, as any of the foregoing may be amended, modified, codified, reenacted, promulgated or published, in whole or in part, and in effect from time to time which is enforceable against a party. Without limiting the generality of the foregoing, "Applicable Laws" includes the Health Insurance Portability Accountability Act of 1996 (as amended, "HIPAA").

1.3 "Business Associate Agreement" means the Business Associate Agreement by and between the parties attached hereto as Exhibit D.

1.4 "Confidential Information" means, subject to the exceptions set forth below, any information or data, regard less of whether it is in tangible form, disclosed by either party (the "Disclosing Party") that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the other party (the "Receiving Party"); provided, however, that subject to the following sentence (a) reports and/or information related to or regarding a Disclosing Party's business plans, financial plans, strategies, and current and prospective customers will be deemed Confidential Information of the Disclosing Party and (b) the VITL Data will be deemed Confidential Information of VITL, in each case even if not so marked or identified. "Confidential Information" will not include any information which (i) is publicly known through no fault of Receiving Party; (ii) was properly known to Receiving Party, without restriction, prior to disclosure by the Disclosing Party; (ii i) was properly disclosed to Receiving Party, without restriction, by another person with the legal authority to do so; or (iv) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

1.5 "Documentation" means the printed and digital instructions, online help files, technical documentation and user manuals made available to PatientPing by VITL regarding the VITL Services, including without limitation the workflow attached hereto as Exhibit B.

1.6 "VITL Data" means all data, information and content provided by VITL to PatientPing under or pursuant to this Agreement, including but not limited to the ADT Data.

2. SERVICES AND RESPONSIBILITY; EXCLUSIVITY

2.1 Provision of Services; License Grants.

(a) VITL Services and VITL Data. VITL will make the VITL Services available to PatientPing pursuant to this Agreement. VITL hereby grants to PatientPing an exclusive right and license (i) to access and use the VITL Services and Documentation and (ii) to access, copy, modify, display and use any VITL Data, in each case solely for the permitted purposes described on Exhibit A attached hereto and solely during the term of this Agreement, except as otherwise set forth in Section 5.I below.

(b) VITL Mark. VITL hereby grants to PatientPing a non-exclusive right and license to use the VITL logo set forth on Exhibit A attached hereto (the "VITL Mark") on certain webpages of PatientPing's website that are made available to Providers in conjunction with the provision of the PatientPing Services in order to identify to such Providers that the applicable ADT Data was provided through a partnership between PatientPing and VITL. PatientPing will display the VITL Mark preceded by the following tag line "In Partnership with" as represented on Exhibit A for Providers that PatientPing is able to determine are located in the State of Vermont as determined by log-in credentials. If PatientPing makes changes to the application design, the parties will mutually agree how PatientPing will display the VITL Mark consistent with the image included in Exhibit A below.

PatientPing will also display the VITL Mark on the Log-in Pages on which it captures user log-in credentials as follows. These Log-in Pages are currently located at <https://aco.patientping.com>,

Https: //snf.patientping.com, Htps: //hha.patientping.com, Htps: //my.patientping.com and https://care.patientping.com (collectively, "Log-in Pages"). PatientPing will determine if the user accessing the specified pages is located in the State of Vermont by determining the user's IP address. If the user is in Vermont, PatientPing will display the logo in a manner substantially consistent with the image included in Exhibit A. PatientPing will provide notification of change to the user authentication process that will change how the VITL Mark is displayed on the Log-In Pages.

VITL will pay to PatientPing \$300 per month for the services included in Section 2.1(b), which amounts will be deducted by PatientPing from its quarterly Revenue Share (as defined below) payments to VITL.

2.2 Responsibilities.

(a) VITL Responsibilities. VITL will be solely responsible for the aggregation and delivery without modification of ADT Data. VITL acknowledges and agrees that PatientPing does not verify the nature or status of any patient data being used, disclosed, accessed or transferred as part of the VITL Services. VITL must make independent and informed decisions in full compliance with all Applicable Law prior to initiating such transmissions of patient information.

(b) PatientPing Responsibilities. PatientPing will be solely responsible for the function of the services it makes available to Providers and for all sales and marketing of such services to Providers and prospective Providers, provided that PatientPing will from time to time consult with VITL regarding optimal go-to-market and pricing strategies and mutually beneficial promotional activities.

2.3 Exclusivity.

(a) VITL will not, directly or indirectly, make available or otherwise provide any admission, discharge or transfer data to any third party for the purposes of providing encounter notification or other PatientPing Services.

(b) For the purposes of providing encounter notifications, PatientPing will not, directly or indirectly, receive ADT Data from any organization who is contributing ADT Data to the VHIE other than VITL.

3. SUPPORT SERVICES; SERVICE AVAILABILITY; DEVELOPMENT

3.1 PatientPing Support Services. PatientPing will be responsible for providing support directly to Providers, which will include the following: (a) initial error determination, (b) Provider software/hardware issues, (c) installation/set-up, (d) how-to questions, (e) basic error resolution, and (f) escalation to VITL Support as applicable.

3.2 VITL Support Services. VITL will be responsible for providing support services and making available the VITL Services as described in the Support Services and Service Availability Commitment addendum attached hereto as Exhibit C. To the extent any Provider or other customer of PatientPing contacts VITL with support related inquiries, VITL will direct those Providers and other customers to PatientPing for resolution of the applicable inquiry and will

promptly notify PatientPing regarding such inquiry, including the identity and contact information of the individual submitting the inquiry.

3.3 Feedback; Future Development. VITL may from time to time provide suggestions, comments or other feedback ("Feedback") to PatientPing with respect to PatientPing's products and services. PatientPing will be free to use, disclose, reproduce and otherwise exploit the Feedback it receives as it sees fit, and may proceed with the development of enhancements, new features or functionality based on such Feedback at its sole discretion. As between the parties, each party will bear its own costs and expenses related to its research and development activities.

3.4 Partnership Evaluation and Improvement. PatientPing and VITL will meet monthly (via telephone, video or in-person) to ensure the health of the partnership. The discussion of the parties at such meetings will include, but not be limited to, pathways to optimize speed to market, success of contracting processes, success of marketing processes and areas partnership is excelling and where there is room for improvement.

4. REVENUE SHARING; TAXES

4.1 Revenue Share. Subject to Exhibit C attached hereto, PatientPing will pay to VITL a portion of PatientPing Services Revenue according to the schedule in Exhibit E ("Revenue Share"). Payment by PatientPing to VITL of the Revenue Share will be made thirty (30) days after the end of each calendar quarter. VITL will be solely responsible for payment of any sales, use and other taxes or duties, however designated, except for those taxes based on the income of PatientPing. Beginning on the first year anniversary of the Effective Date, either party may elect in a writing delivered to the other party, once per calendar year, to renegotiate the Revenue Share based on then-current market conditions. Upon receipt of such election, the parties will negotiate in good faith for a thirty (30) day period. If, after the end of such thirty (30) day period, the parties have not mutually agreed on new terms of the Revenue Share, the then-existing Revenue Share will continue in effect with no change.

4.2 Provider Fees. PatientPing will have sole discretion in determining the fees payable by Providers to PatientPing in consideration of the PatientPing Services and other terms and conditions that are set forth in the Provider Agreements. Without limiting the foregoing, PatientPing will from time to time consult with VITL in determining such fees as compared to then-current market conditions.

5. CONFIDENTIALITY

5.1 The Receiving Party will use the Confidential Information of the Disclosing Party solely in accordance with the provisions of this Agreement and it will not disclose, or permit to be disclosed, the same directly or indirectly, to any third party without the Disclosing Party's prior written consent, except as otherwise permitted hereunder. Nothing in this Section 5.1 is intended to restrict or otherwise limit the exercise by the Receiving Party of the rights and licenses granted to it under this Agreement; provided that the Receiving Party uses reasonable measures to protect the confidentiality and value of the Disclosing Party's Confidential Information. Notwithstanding any provision of this Agreement, the Receiving Party may disclose the Confidential Information of the Disclosing Party, in whole or in part (a) to its employees, officers, directors, attorneys,

auditors, financial advisors and/or subcontractors who have a need to know and are legally bound to keep such information confidential by confidentiality obligations consistent with those of this Agreement; or (b) as reasonably deemed by the Receiving Party to be required by Applicable Law (in which case the Receiving Party will provide the other with prior written notification thereof, will provide the Disclosing Party with the opportunity to contest such disclosure, and will use its reasonable efforts to minimize such disclosure to the extent permitted by Applicable Law); and, in the case of PatientPing as the Receiving Party, to Providers to perform PatientPing's obligations under its Provider Agreements. In addition, and notwithstanding any provision of this Agreement to the contrary, PatientPing may create or otherwise produce data and other information by de-identifying any VITL Data (the "De-Identified Data") and may use the De-Identified Data during the Term and thereafter, solely for PatientPing's internal use and in order to provide the PatientPing Services described in Exhibit A.

5.2 The Receiving Party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section 5, the Disclosing Party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement.

6. REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION.

6.1 Mutual Representations and Warranties: Covenants. Each party represents and warrants as of the Effective Date that (a) it is a corporation organized and existing under the laws of its jurisdiction of incorporation with full power and authority to enter into and perform this Agreement; (b) this Agreement has been duly authorized by all necessary corporate action and constitutes the binding obligation of such party enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy laws or other laws affecting the rights of creditors generally; (c) the person(s) executing this Agreement on its behalf has actual authority to bind it to this Agreement; and (d) such party's execution and performance of this Agreement does not and will not violate or conflict with any provision of such party's governing corporate instruments or of any commitment, agreement or understanding that such party has or will have to or with any person or entity. Further, each party covenants during the Term that it will comply with all Applicable Law.

6.2 VITL Representations and Warranties. VITL represents, warrants and covenants that (a) the VITL Services will conform to the Documentation, (b) the VITL Services and VITL Data, and any use thereof, will not infringe or misappropriate the rights, including intellectual property and privacy rights, of any third party and (c) it has obtained all necessary authorizations under Applicable Law to disclose the VITL Data to PatientPing for the purposes contemplated by this Agreement.

6.3 Indemnification.

(a) VITL will indemnify, defend and hold harmless PatientPing and its directors, officers, employees and agents from and against any and all claims, actions, losses, expenses, damages or other liabilities, including reasonable attorneys' fees, incurred by or assessed

against any of the foregoing, but solely to the extent the same arise out of third-party claims relating to the VITL Data or any alleged breach of Section 6.2 (b) or (c) by VITL.

(b) Except for liability for which VITL is responsible under Section 6.3(a) above, PatientPing will indemnify, defend and hold harmless VITL and its directors, officers, employees and agents from and against any and all claims, actions, losses, expenses, damages or other liabilities, including reasonable attorneys' fees, incurred by or assessed against any of the foregoing, but solely to the extent the same arise out of third-party claims relating to the PatientPing Services.

(c) The indemnification obligations under Sections 6.3(a) and 6.3(b) above are contingent upon (i) the indemnified party promptly notifying the indemnifying party of the applicable claim or action, (ii) the indemnifying party having the sole and exclusive authority to defend and/or settle any such claim or action (provided that the indemnifying party may not settle any such claim or action without the indemnified party's prior written consent, which will not be unreasonably withheld) and (iii) the indemnified party cooperates with the indemnifying party in connection therewith.

7. LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS OR A PARTY'S INDEMNIFICATION OBLIGATIONS, (A) UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT OR OTHERWISE, WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES, EVEN IF A REPRESENTATIVE OF SUCH PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES AND (B) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY DIRECT DAMAGES, COSTS OR LIABILITIES IN EXCESS OF THE AMOUNTS PAID OR PAYABLE BY PATIENTPING DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE APPLICABLE INCIDENT OR CLAIM.

8. TERM; TERMINATION

8.1 Term. The term of this Agreement will commence on the Effective Date and continue for three years (the "Initial Term"). Thereafter, the term of this Agreement will automatically renew for successive periods of one (1) year each (each such period, a "Renewal Term"; together with the Initial Term, the "Term"), unless either party notifies the other at least thirty (30) days prior to the end of the Initial Term or the then-current Renewal Term that it does not wish to renew, in which case the Agreement will expire.

8.2 Termination. Either party may terminate this Agreement upon written notice to the other party in the event that the other party materially breaches this Agreement and does not cure

Such breach within thirty (30) days of notice. In addition, PatientPing may terminate this Agreement in accordance with Exhibit C attached h e r e t o .

8.3 Effect of Termination. Upon the expiration or termination of this Agreement, PatientPing will immediately (i) cease distributing or otherwise using the VITL Data and the VITL Services, and (ii) remove all of the VITL Data from PatientPing's electronic and print files and delete or destroy any copies, along with any related documentation (and any copies thereof) that PatientPing may have received or otherwise may possess, in each case, excluding the De-Identified Data, which PatientPing may continue to use in accordance with Section 5.1 above.

8.4 Survival. Upon termination or expiration of this Agreement all rights and obligations will immediately terminate except that PatientPing's obligation to pay amounts accrued but not paid and the provisions of Sections 1, 3.3, 5, 6, 7, 8.3, 8.4 and 9 will survive the termination or expiration of this Agreement and remain in full force and effect.

9. GENERAL

9.1 Publicity. Except as expressly set forth in Section 2.1(b) above, each party agrees that it will not, without the prior written consent of the other party, use in advertising, publicity or otherwise the name or any trade name, trademark, trade device, service mark, brand name, symbol or any other identification or any abbreviation, contraction or simulation thereof of the other or refer to the existence of this Agreement in press releases, advertising or other materials distributed publicly.

9.2 Assignment. Neither party may assign or transfer this Agreement in whole or in part without the prior written consent of the other party, except that either party may assign or transfer this Agreement without the written consent of other party to a corporation or other business entity succeeding to all or substantially all the assets and business of the assigning party to which this Agreement relates. Any attempted assignment, delegation or transfer by an assigning party in violation hereof will be null and void. Subject to the foregoing, this Agreement will be binding on the parties and their successors and assigns.

9.3 Amendment; Waiver. No amendment or modification to neither this Agreement, nor any waiver of any rights hereunder, will be effective unless assented to in writing by both parties. Any such waiver will be narrowly construed to apply only to the specific provision and under the specific circumstances for which it was given, and will not apply with respect to any repeated or continued violation of the same provision or any other provision. Failure or delay by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision

9.4 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. For purposes hereof, a facsimile or electronic copy (including a portable data format (PDF) copy) of this Agreement will be deemed to be an original.

9.5 Relationship. Nothing contained herein will in any way constitute any association, partnership, agency, employment or joint venture between the parties, or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the authority

To obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties. Neither party will represent to the contrary, either expressly, implicitly or otherwise.

9.6 Unenforceability. If a court of competent jurisdiction determines that any provision of this Agreement is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement will remain in full force and effect and bind the parties according to its terms. To the extent any provision cannot be enforced in accordance with the stated intentions of the parties, such provision will be deemed not to be a part of this Agreement.

9.7 Governing Law. All disputes, claims or controversies arising out of this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby will be governed by and construed in accordance with the laws of the State of Vermont without regard to its rules of conflict of laws.

9.8 Notices. All notices under this Agreement will be in writing and will reference this Agreement. Notices will be deemed given when: (a) delivered personally; (b) sent by confirmed facsimile or e-mail; (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the addresses set forth on the first page of this Agreement or such other addresses designated pursuant to this Section 9.8.

9.9 Subcontractors. VITL hereby consents to PatientPing's use of subcontractors and agents in the performance of its obligations hereunder; provided that PatientPing will remain fully liable for the acts and omissions of its agents and subcontractors as if performed by PatientPing and under no circumstances shall PatientPing disclose, deliver, or use any VITL Data outside of the United States.


9.10 Entire Agreement. This Agreement, including each attachment referred to herein constitutes the entire agreement between the parties with respect to the subject matter hereof. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations. In the event of any conflict between the terms of this agreement and the Business Associate Agreement, the Business Associate Agreement will prevail. This Agreement may not be modified or waived, in whole or part, except in writing and agreed to by an officer or duly authorized representative of both parties.

9.11 Titles. All article and section titles herein are provided for general information and reference only. Thus, the subject matter in each section herein will not be construed by reference to the title nor will the scope of section be limited in any manner based on the title of that section.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in their respective names and on their behalf as of the date of the last signature set forth below (the "Effective Date").

PATIENTPING, INC.

**VERMONT INFORMATION
TECHNOLOGY LEADERS, INC.**

By: 
Name: Jay Desai
Title: President
Date: 11/16/15


By: 
Name: John K. Evans MHA, FACHE
Title: President and CEO
Date: 11/16/15

Exhibit A

VITL SERVICES

VITL will transmit any and all HL7 v2-compatible messages received from Providers containing ADT Data to PatientPing through a TCP/IP connection using a VPN tunnel.

Definitions:

- “HL7” means the standard produced by the Health Level Seven International, and any successor body, applicable to the transfer of admission, discharge and transfer information.

PERMITTED PURPOSES

PatientPing may use the ADT Data to provide its web-based software application services to Providers (the “PatientPing Services”) allowing the Providers to **share information** with (*i.e.*, send to and receive from) other health care entities that are involved in the care of patients for whom the applicable Provider is delivering services, limited to:

1. PatientPing will (a) electronically and securely receive patient rosters from Providers, (b) compare the patient rosters against the ADT Data using patient demographic variables, and (c) provide to Providers a **notification service** for all matched patients through PatientPing supported tools (e.g. web/mobile application, secure email) or integration with existing EMR or population health management technology.
2. PatientPing will provide a web service that allows Providers to see, upon admission to any facility, **care guidelines** that include historical encounters. These historical encounters will be available to Providers through PatientPing supported tools or direct integration with existing technology.

For the avoidance of doubt, the PatientPing Services require transmission of all ADT Data received by VITL from Providers sending ADT Data to VITL. Patients for whom notifications are not generated will be stored in PatientPing database and used for the purposes of appending current encounters with historical encounters. By way of example, if a hospital sending data to VITL admits 10 patients in total on any given day, VITL will send PatientPing 10 admission messages during that day, in real-time. If Providers subscribing to the PatientPing Services have uploaded patient rosters for only 3 of those admissions, PatientPing will generate notifications on the 3 patients and store admission data in PatientPing databases for the remaining 7 ADT messages. In the event patients linked to those admissions are later included on a subsequently uploaded Provider patient roster, those historical encounters will be appended to the most recent notification.

VITL Mark on Log-In Pages



Exhibit B

VITL Services Workflow

VITL - PatientPing Data Flow

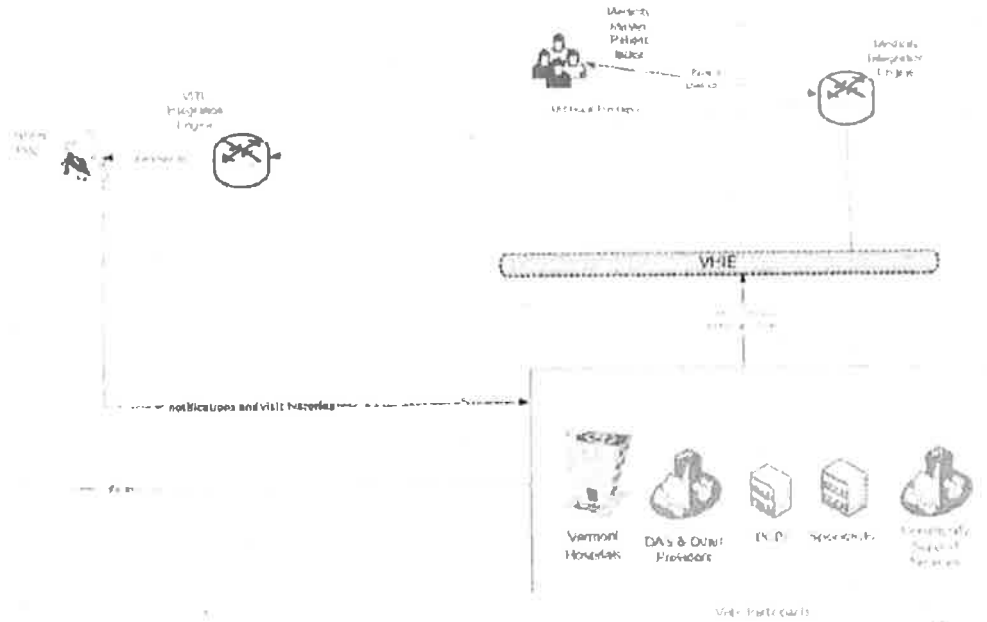


Exhibit C

SUPPORT SERVICES AND SERVICE AVAILABILITY COMMITMENT

1. Maintenance and Support. Maintenance and support consists of the following:

(a) **Error Corrections.** VITL will correct and/or provide a work-around for any reproducible error reported by PatientPing in connection with the VITL Services in accordance with the applicable priority level.

(b) **Updates.** VITL will apply all bug fixes, error corrections, updates and upgrades to the VITL Services at no additional cost.

(c) **Support.** VITL will make phone and online technical support available to PatientPing on a 24x7x365 basis (excluding national holidays and weather emergencies). All inquiries and support requests will be submitted through VITL's technical support telephone line (877-592-4053) or web based support system at www.myvitl.net (any such submission, a "Support Ticket").

2. Priority Levels of Errors and Responses. As part of the Support Ticket, PatientPing will designate the initial priority level (each of which is described further below) and provide VITL with a reasonable description of the problem, together with any supporting information which may assist VITL in its diagnostic process. Upon further investigation, VITL and PatientPing may mutually agree to update and change the priority level of the Support Ticket. If VITL wishes to change the priority level, it will provide PatientPing with the applicable details related to such proposed change.

3. Priority Levels.

(a) **Critical:** Major system impact (*i.e.*, service down) that cannot be reasonably circumvented, and which is an emergency condition that prevents or significantly restricts the use of any VITL Services by PatientPing to perform necessary business functions.

(b) **High:** Moderate system impact (*i.e.*, service crashing/hanging), which restricts the use of one or more features of the VITL Services by PatientPing to perform necessary business functions but does not completely prevent or significantly restrict use of the VITL Services.

(c) **Low:** Minor system impact (*i.e.*, performance/operational impact), which restricts the use of one or more features of the VITL Services by PatientPing to perform necessary business functions, but the defect can be reasonably circumvented; or a reported defect in the VITL Services which does not substantially restrict the use of one or more portions or feature of the VITL Services by PatientPing to perform necessary business functions.

4. Response Times. VITL will respond to PatientPing with corrective action and implementation in accordance with the following response times:

(a) **Critical:** VITL will acknowledge receipt of a Critical priority Support Ticket within 1 hour after receipt. VITL will perform an internal assessment of the issue and provide to PatientPing an initial action plan within 3 hours after acknowledgment. VITL will work on a

continuous effort basis to execute the aforesaid action plan, and resolve the problem within 24 hours following delivery of the action plan.

(b) High: VITL will acknowledge receipt of a High priority Support Ticket within 2 hours after receipt. VITL will perform an internal assessment of the issue and provide to PatientPing an initial action plan within 5 hours after acknowledgment. VITL will work on a continuous effort basis during business hours to execute the aforesaid action plan, and resolve the problem within 1 business day following delivery of the action plan.

(c) Low: VITL will acknowledge receipt of a Low priority Support Ticket within 8 hours after receipt. VITL will perform an internal assessment of the issue and provide to PatientPing an initial action plan within 2 business days after acknowledgment. VITL will work to execute the aforesaid action plan, and resolve the problem within 5 business days following delivery of the action plan.

5. Several Availability Commitment and Transmission Time.

(a) Service Availability.

(i) Goal. VITL will provide at least a 99.0% uptime service availability level ("Service Availability Level") for the VITL Services for each calendar month.

(ii) Exclusions; Calculation. The Service Level Availability does not include (a) maintenance events (i.e., maintenance of the VITL Services that gives rise to the interruption of the VITL Services) during the hours of 10:00pm and 6:00am ET provided that VITL has given PatientPing at least two (2) business days' notice and that such events occur no more frequently than four (4) times per calendar month, (b) outages or disruptions caused by PatientPing (except to the extent such outages or disruptions are caused by contemplated use of the VITL Services) and (c) outages or disruptions attributable to any of the following causes: earthquake, flood or other natural disaster, act of God, terrorism, war or any change in or the adoption of any law, regulation, judgment or decree. VITL will carry out the Service Availability Level measurement which will be based on the monthly average percentage availability, calculated at the end of each calendar month as the total actual uptime minutes divided by the total possible uptime minutes in the month.

(iii) Reporting. VITL will keep and send to PatientPing within five (5) business days after the end of each calendar month full records of its availability measurement activities under this Agreement.

(b) Transmission Achievement.

(i) Goal; Calculation. VITL will endeavor to achieve an elapsed time between receipt of ADT Data by VITL and the transmission to PatientPing of the corresponding ADT Data (the "Transmission Time") of less than sixty (60) minutes (the "Maximum Transmission Time"). "Transmission Achievement Level" means, with respect to any calendar month, the percentage of encounter notifications for which the Transmission Time was less than the Maximum Transmission Time. Thirty (30) days after the first ADT Data is transmitted to PatientPing, both parties will assess whether the Maximum Transmission Time can reasonably be met on an on-

going basis and mutually agree to revise the Maximum Transmission Time based on then-achievable conditions.

(c) Reduction in Revenue Share. The Revenue Share for any calendar month will be reduced to the lower of the Quality Tiers corresponding to the applicable Service Availability Level and to the Transmission Achievement Level for such calendar month.

Quality Tier	Service Availability Level	Transmission Achievement Level	Revenue Share Reduction
1	Greater than or equal to 99.0%	Greater than or equal to 98%	0%
2	Less than 99.0% and greater than or equal to 97%	Less than 98% and greater than or equal to 90%	20%
3	Less than 97% and greater than or equal to 90%	Less than 90% and greater than or equal to 80%	50%
4	Less than 90%	Less than 80%	100%

For example:

- assuming for a given calendar month that:
 - the PatientPing Services Revenue is \$10,000;
 - the VITL Services had unplanned downtime of 10 hours (i.e., an uptime of 42,600 minutes out of a maximum of 43,200 minutes for a 30 day month); and
 - 1,000 encounter notifications were transmitted by VITL to PatientPing, 850 of which were transmitted with a Transmission Time less than the Maximum Transmission Time;
- then
 - Service Availability Level is:
 - $42,600 \text{ minutes} \div 43,200 \text{ minutes} = 98.6\%$,
 - which corresponds to Quality Tier 2; and
 - Transmission Achievement Level is:
 - $850 \text{ encounter notifications} \div 1,000 \text{ encounter notifications} = 85\%$,
 - which corresponds to Quality Tier 3.
- Quality Tier 3 is the lower of the corresponding Quality Tiers and, accordingly, the Revenue Share will be reduced to 12.5%, yielding an amount owed for such month of \$1,250.

6. Termination. If PatientPing submits at least two (2) Critical priority Support Tickets during any consecutive three month period and/or the Quality Tier for any two (2) months of any consecutive three month period is Quality Tier 4, then PatientPing may immediately terminate this Agreement upon written notice to VITL.

Exhibit D
BUSINESS ASSOCIATE AGREEMENT

See attached.

PARTNER SUBCONTRACTOR BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is executed by and between PatientPing ("Company") and Vermont Information Technology Leaders, Inc., a Vermont non-profit corporation ("VITL"), which is a Business Associate under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") of certain Covered Entities who have engaged VITL to perform services for them. Pursuant to a separate Services Agreement, VITL has engaged Company to provide certain services to VITL as a Subcontractor.

Recitals

VITL is the statewide health information exchange organization for the State of Vermont. As part of its activities, VITL intends to offer numerous services related to electronic health records wherein physician practices, hospitals and laboratories can electronically transmit and view health information including but not limited to the Vermont Health Information Exchange, an electronic system which VITL has established in order that organizations may exchange Protected Health Information (defined below) and data to facilitate the treatment of patients and to improve quality of care (the "Vermont HIE"). VITL and Company are partnering to assist VITL in these activities. VITL and Company are committed to complying with the Privacy and Security Rule (defined below) as amended by provisions of the Health Information Technology for Economic and Clinical Health Act ("HITECH"), as applied to Business Associates. Company agrees to abide by the assurances, terms, and conditions contained this Agreement, which sets forth the manner in which Company will handle the Protected Health Information that is provided to, or received by Company from, or on behalf of, VITL. The parties agree as follows:

Section I
Definitions

- 1.1 *Administrative Safeguards*: "Administrative Safeguards" shall mean the administrative actions, policies and procedures employed to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Company's workforce in relation to the protection of that information.
- 1.2 *Breach*: Breach shall have the same meaning as set forth in 45 C.F.R. § 164.402.
- 1.3 *Individual*: "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. § 160.103 and includes a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502.
- 1.4 *Physical safeguards*: "Physical Safeguards" shall mean the physical measures, policies, and procedures employed to protect electronic information systems and related buildings and equipment from natural and environmental hazards, and unauthorized intrusion.
- 1.5 *Privacy and Security Rule*: "Privacy and Security Rule" shall mean the Standards for Privacy and Security of Individually Identifiable Health Information codified at 45 C.F.R., parts 160 and 164, subparts A and F.

- 1.6 *Protected Health Information*: "Protected Health Information" ("PHI") shall have the same meaning as the term "Protected Health Information" in 45 C.F.R. § 160.103, limited to the information received or created by VITL and Company from, or on behalf of, Individuals whose PHI is available on the Vermont JIE.
- 1.7 *Secretary*: "Secretary" shall mean the United States Secretary of the Department of Health and Human Services or his/her designee.
- 1.8 *Security Incident*: "Security Incident" shall have the same meaning as the term "Security Incident" in 45 C.F.R. § 164.304, and shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- 1.9 *Technical safeguards*: "Technical Safeguards" shall mean the technology, policy and procedures that protect electronic PHI and control access to it.

Section 2 Obligations

Company agrees:

- 2.1 *Not to Use or Further Disclose PHI Unless Permitted*. Company agrees not to use or further disclose PHI other than as expressly permitted or required by Section 3 of this Agreement, or as authorized or required by law.
- 2.2 *To use Safeguards*. Company agrees to use reasonable safeguards to prevent the use or disclosure of the PHI other than as permitted or required by Section 3 of this Agreement or as otherwise authorized or required by law. Company further agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains or transmits in electronic form.
- 2.3 *To Report Inappropriate Disclosures, Breaches and Security Incidents of PHI*. If Company becomes aware of any use or disclosure of PHI that is not authorized by this Agreement, or by law, or that constitutes a Breach, or if Company becomes aware of any Security Incident that may affect electronic PHI, Company agrees to report such use, disclosure, Breach or Security Incident to VITL within 2 business days and to assist VITL in any notifications related to the unauthorized use or disclosure as necessary to comply with the Privacy and Security Rule and HITECH.
- 2.4 *To Mitigate*. Company agrees to cooperate with VITL and, to the extent possible, to mitigate any harmful effect that is known to Company of a use or disclosure of PHI by Company in violation of the requirements of this Agreement.
- 2.5 *To Ensure Agents Comply with the Terms of this Agreement*. Company will require all employees and any agents, including subcontractors, to whom Company provides PHI, to

agree to the same restrictions and conditions that apply to Company through this Agreement.

- 2.6 *To Provide Information for Accounting.* Company agrees to document all disclosures of PHI as necessary to provide an accounting to an individual as required by 45 C.F.R. § 164.528 of the Privacy and Security Rule and HITECH and to provide information to VITL as needed to satisfy the requirements for an accounting of disclosures of PHI under the Rule.
- 2.7 *To Disclose Practices, Books, and Records.* Unless otherwise protected or prohibited from discovery or disclosure by law, Company agrees to make internal practices, books, and records relating to the use and disclosure of PHI or created or received by Company on behalf of VITL, available to VITL or to the Secretary upon request. Company shall have a reasonable time within which to comply with such requests.
- 2.8 *To Comply with Privacy and Security Rule.* Company agrees to comply with 45 C.F.R. § 164.504(c) and with 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 and any and all other applicable provisions of the Privacy and Security Rule and of HITECH.

Section 3 Permitted Uses and Disclosures

- 3.1 *Use of PHI Only for Specified Purposes.* Company may use and disclose PHI only for the services for which it is retained by VITL and for other functions reasonably necessary to perform the purposes authorized by this Agreement: (a) to its employees, subcontractors, and agents, in accordance with this Section; or (b) as otherwise permitted by the terms of this Agreement or authorized or required by law. All other uses not authorized by this Agreement or any other related agreement between the parties or by law are prohibited.
- 3.2 *Use of PHI for Company's Management and Administration.* Company may use PHI for its proper management and administration and to carry out its legal responsibilities.

Section 4 Term and Termination

- 4.1 *Term.* The term of this Agreement shall be effective during the term of the Agreement between Company and VITL and shall terminate when all of the PHI provided to Company, or created or received by Company on behalf of VITL, is destroyed or returned to VITL or, if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this section. This provision shall apply to PHI that is in the possession of subcontractors or agents of Company.
- 4.2 *Termination for Cause.* Upon VITL's knowledge of a material breach of this Agreement by Company, VITL shall provide Company thirty (30) days in which to cure the breach or end the violation. VITL may terminate this Agreement if Company does not cure the

breach or end the violation within this thirty (30) day period. VITL may terminate this Agreement, and Company agrees to such immediate termination, if Company has breached a material term of this Agreement and cure is not possible.


- 4.3 *Effect of Termination.* Upon termination of this Agreement, if Company determines that returning or destroying the PHI is infeasible, Company shall provide to VITL notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, Company shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such information to those purposes that make return or destruction infeasible, for so long as Company maintains such PHI.

Section 5 Miscellaneous Provisions

- 5.1 *Regulatory References.* A reference in this Agreement to a section in the Privacy and Security Rule or the Security Rule means the Section in effect or as amended.
- 5.2 *Amendment.* The parties agree to take such action as is necessary to amend this Agreement from time to time for compliance with VITL's agreement(s) with other party's related to its services including the Vermont HIE and/or with requirements of the Privacy and Security Rule, HIPAA, HITECH and other subsequently enacted and relevant legislation.
- 5.3 *Survival.* The rights and obligations of the parties to this Agreement shall survive the termination of the Agreement.
- 5.4 *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Company and VITL to comply with the Privacy and Security Rule, HIPAA and HITECH.

IN WITNESS WHEREOF, VITL and Company have executed this Agreement effective as of the Effective Date.

Company: PatientPing

By: 
Name: Jay Desai
Title: President and CEO
Address: 330 Congress Street, Floor 4
Boston, MA 02210

Fax Number: _____

VERMONT INFORMATION TECHNOLOGY LEADERS, INC.

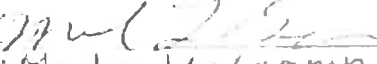
By: 
Name: Michael L. Lignon
Title: CTO
Address: 144 Main Street
Suite 1
Montpelier, Vermont 05602
Fax Number: (802) 223-4100

Exhibit E

REVENUE SHARE AGREEMENT

Percent of notifications provided by VHIE ADT Data	Revenue Share
>50%	25%
30-50%	15%
15-30%	10%

Percent of notifications provided by VITL Data is calculated by counting the number of actual encounter notifications included in PatientPing Services to Providers during a calendar quarter and dividing it by the total notifications included in PatientPing Services to Providers during such calendar quarter.