

## MEMORANDUM OF UNDERSTANDING

**Between the  
Vermont Department of Financial Regulation (DFR)  
and  
Green Mountain Care Board (GMCB)**

### I. Purpose

Pursuant to Contract #20229 the DFR contracts with Onpoint Health Data (Contractor). The purpose of this MOU is to assign the work to be performed by the DFR, as specified in Contract #20229 and its Attachments, and as amended by Amendment #1, to the GMCB.

### II. Terms of Agreement

The GMCB and the DFR agree that the GMCB will fulfill the specifications of work to be performed pursuant to Contract #20229 and its Attachments, as amended.

Under this MOU, the GMCB stands fully in place of the DFR in Contract #20229, as amended and holds all rights, privileges and obligations provided for under Contract #20229, as amended.

This MOU applies to the period from July 1, 2013 through the end of the Contract, as amended.

### III. Attachment A

A copy of Contract #20229 and a copy of Amendment #1 are attached to this MOU as **Attachment A**.

By signing this agreement all parties agree upon all the terms as stated above.

Agreed upon by:

Signature: \_\_\_\_\_

Name/Title: Georgia Maheras,  
Executive Director, Green Mountain  
Care Board

Date: 7/19/13

Signature: \_\_\_\_\_

Name/Title: Susan L. Donegan, Commissioner,  
Vermont Department of Financial Regulation

Date: 7/19/13

**AMENDMENT #1**

It is agreed between the **State of Vermont, Department of Financial Regulation** (FKA Department of Banking, Insurance, Securities and Health Care Administration) (hereinafter called "State") and **Onpoint Health Data** (hereinafter called "Contractor") that contract # 20229 dated October 27, 2011, is amended as follows:

1. **Standard Contract for Services— Strike paragraph #3 of the Standard Contract for Services and substitute in lieu thereof:**

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed **\$3,165,090.00**. The State does not guarantee the assignment of any minimum number of hours or other work under this contract.

2. **Attachment A— Add the following paragraphs to Attachment A:**

8. **Annual Paid Claims and Enrollment Report (APCER)**
  - 8.1 Contractor shall create and produce the Annual Paid Claims and Enrollment Report (APCER) on a fiscal year basis spanning July 1, 2012 through June 30, 2013, by company for every insurer submitting eligibility and/or medical claims to VHCURES for medical, pharmacy, and mental health services for comprehensive major medical health benefit plans, Medicare Supplement, Medicare Part C, and Medicare Part D.
  - 8.2 By express, specific, and written notice, the State may ask the Contractor to collect and incorporate dental insurers and dental claims data into the APCER ("Dental Data Collection, Consolidation, and Integration into VHCURES"). Upon receipt of that notice, Contractor shall perform the Dental Data Collection, Consolidation, and Integration into VHCURES. Neither Amendment #1 nor any other obligation of Contract #20229 is in any way a binding agreement that such work shall be authorized.
  - 8.3 The Contractor shall divide the report by different categories of insurance including Comprehensive Major Medical, Medicare Supplement, Medicare Part C, Medicare Part D, and Dental (if requested by the State by express written direction).
  - 8.4 Contractor shall create and produce the APCER with similar content, organization, and design, and format the APCER consistent with the report published by the State "HIT/HCCA Assessment Fund Surcharge Report by Insurer FY2013," available from the State and publicly accessible at [http://hcr.vermont.gov/hit/IT\\_fund](http://hcr.vermont.gov/hit/IT_fund). The primary exception is that the State will calculate the amounts for the assessments by insurer for the comprehensive major medical type of insurance to be published in the final State

report. Contractor shall provide the final report as approved by the State and as requested by the State. Contractor shall provide the final report to the State no later than September 23, 2013.

8.5 Prior to submission of the APCER to the State as specified above, Contractor shall compare their proposed APCER with the APCER from the prior year as available from the State and investigate and report on significant variances from the prior published report, including any and all of the following: omitted insurers, absent insurers, new insurers, missing quarters, notable changes in enrollment and paid claims amounts, and variances in enrollment and paid claims amount by company within the current APCER. Contractor shall explain and/or resolve issues related to variances with the prior published APCER. The Contractor shall provide up to 24 hours of work on validation, edit checks, and explanatory notes for each annual APCER.

8.6 Contractor shall provide the State with technical documentation detailing the approach and methods used to produce the APCER, as well as technical documentation of any issues that resulted from the investigation of variances with prior reports or within the current report for any company.

9. **Data Users Support**

9.1 Contractor shall assist licensed VHCURES users in a manner that helps those users understand: the data set and its functions; the value-added modifications to the data made by Contractor; and any caveats and limits to the data set. Contractor shall schedule at least two hours per week (Office Hours) to receive and respond to ad hoc queries from VHCURES data users regarding technical data issues that require clarification and additional explanation for data users pursuing their own reports, research, and analytics.

9.2 As requested by the State, Contractor shall participate in at least one and as many as two Data Analysis Boot Camps designed to assist VHCURES data users to understand and use the data. Contractor shall prepare instructional content, provide formal training and instructional materials, to support a 4 hour, on-site training session and shall have participants and the State evaluate the first session so contractor can make any minor modifications for a potential second session. Contractor shall coordinate with other Data Analysis Boot Camp planners and participants as requested by the State and at the State's discretion.

9.3 Contractor shall design, implement, and actively manage the on-line SharePoint VHCURES Collaborative Site that includes all licensed VHCURES users, and other individuals as approved by the State. In consultation with the State, Contractor shall maintain site design; maintain content responsive to users' interests and needs; update and orient users on a continuing basis at Data Users Group meetings and through instructional materials posted on the site; activate and de-activate users; provide technical

support for setting access rights; post content and issue notifications regarding selected postings; develop Frequently Asked Questions (FAQ) content based on data issues raised in discussion threads and Office Hours; and support other activities that keep the site relevant and responsive for users.

**10. Training Session for BI Solution Beta Users**

10.1 The State has identified the need to encourage and facilitate training programs. Contractor shall hold one training session for selected BI Solution Beta users during the term of Contract #20229.

**11. Conditional Tasks— technical consultation and assistance with research projects and special studies**

11.1 The State may ask the Contractor to do perform additional technical consultation and assistance with research projects and special studies and the contractor will provide the state with cost information. If the State approves of the cost information, the State will direct the contractor to do that work.

11.2 Contractor would provide this technical consultation and assistance with research projects and special studies *upon specific express written authorization by the State*. Contractor would provide the State with time and cost estimates for any of these enhancements and will not begin any enhancements until the time and cost estimates have been expressly approved, in writing, by the State.

**12. Conditional Tasks—VHCURES Enhancement**

12.1 The State has identified the need to enhance and improve VHCURES for the purpose of identifying trends and performing analyses related to cost containment and payment reform. Act 48 of the Acts of 2011 and Act 171 of the Acts of 2012 require that the State develop a Unified Health Care Budget, develop a “dashboard” of key indicators, perform an expenditure analysis, develop payment reform pilots, develop hospital budgets, and approve insurance rate filings in addition to numerous other responsibilities. These enhancements may include elements such as improving provider linkages and improving identification of individuals in VHCURES. The State is compiling the list of requested enhancements and will provide this list to the Contractor on an as-needed basis. Examples of enhancements may include, but are not limited to the following:

- 12.1.1 Developing methodology to securely collect unencrypted names and Medicaid identification information;
  - 12.1.2 Incorporating selected provider characteristics to each claim, including service and billing provider information; or
  - 12.1.3 Designing an employer data table, that could explore inclusion of a benefit taxonomy, renewal month, and premium by coverage tier.
- 12.2 Contractor would provide these enhancements *upon specific express written authorization by the State*. Contractor would provide the State with time and cost estimates for any of these enhancements and will not begin any enhancements until the time and cost estimates have been expressly approved, in writing, by the State.

3.

**Attachment B—Strike paragraph #1 of Attachment and substitute in lieu thereof:**

- 1. The maximum amount payable under this contract for service and expenses shall not exceed **\$3,165,090.00**. The State does not guarantee the assignment of any minimum number of hours or other work under this contract. The hourly rate for staff is as follows:

<b>Job Title</b>	<b>Hourly rate</b>
Project manager	\$250
Technical Services Manager	\$250
Technical Consultant	\$250
Data Operation Manager	\$175
Data Operations Staff	\$110
Technical Staff	\$150

The total cost for each employee category as specified above includes any indirect rate that covers the administrative expenses, occupancy fees, utilities, repair and maintenance of equipment, office maintenance, audit and legal fees, insurance, telephone, postage, supplies, etc.

4.

**Attachment B—Add the following paragraphs to Attachment B:**

- 5. The amount billed by the Contractor for the Annual Paid Claims and Enrollment Report (APCER), as described in paragraphs 8.1-8.6 and excluding the Dental Data Collection, Consolidation, and Integration into VHCURES, shall not exceed \$21,500.00.
- 6. The amount billed by the Contractor for the Data Users Support, as described in paragraphs 9.1-9.3, shall not exceed \$76,850.00; specifically, the amount billed for SharePoint Collaborative

Site Design and Implementation shall not exceed \$5,250.00; the amount billed for the SharePoint Collaborative Site Design user Support shall not exceed \$15,000.00; the amount billed for the Continued User Support Office Hours shall not exceed \$30,000.00; the amount billed for the Data Analysis Boot Camp(s) shall not exceed \$20,000.00; and the amount billed for travel related to Data User Support shall not exceed \$6,600.00.

7. The amount billed by the Contractor for the training session for selected BI Solution Beta users, as described in paragraph 10.1 of Attachment A, shall not exceed \$6,000.00.
8. In the event that the state requests, in writing, that the Contractor perform the Dental Data Collection, Consolidation, and Integration into VHCURES, as described in paragraphs 8.1-8.6 of Attachment A, the amount billed by the Contractor upon completion shall not exceed \$72,444.00. Before any billable work may be performed on this project, Contractor must obtain express written authorization of the State; neither this Amendment nor Contract #20229 is in any way a binding agreement that that work shall be authorized.
9. In the event that the state requests, in writing, that the Contractor perform the technical consultation and assistance with research projects and special studies, as described in paragraphs 11.1-11.2 of Attachment A, the amount billed by the Contractor upon completion shall not exceed \$50,000.00. Before any and all performance on this project, billable or otherwise, Contractor must obtain express written authorization from the State; neither Amendment #1 nor Contract #20229 is in any way a binding agreement that that work shall be authorized.
10. In the event that the state requests, in writing, that the Contractor perform the enhancements to VHCURES, as described in paragraphs 12.1-12.2 of Attachment A, the amount billed by the Contractor upon completion shall not exceed \$500,000.00. Before any and all performance on this project, billable or otherwise, Contractor must obtain express written authorization from the State; neither Amendment #1 nor Contract #20229 is in any way a binding agreement that such work shall be authorized.

\*\*\*

Unless expressly stated otherwise, the terms and conditions of Contract # 20229 remain in full force and effect as stated in that contract.

We the undersigned agree to be bound by this Amendment #1 to Contract #20229.

By the State of Vermont Date: <u>July 11, 2013</u>  Signature: <u>Susan L. Donegan</u> Name: Susan L. Donegan, Commissioner Agency: Dept. of Financial Regulation	By the Contractor (Onpoint Health Data) Date: <u>7/9/13</u>  Signature: <u>James Harrison</u> Name: James Harrison Title: President and Chief Executive Officer
--	--

1. **Parties.** This is a contract for services between the State of Vermont, Department of Banking, Insurance, Securities and Health Care Administration (hereafter called "State"), and **Onpoint Health Data** (hereafter called "Contractor") with its principal place of business at **16 Association Drive, P.O. Box 360, Manchester, Maine, 04351**. Contractor's form of business organization is a non-profit corporation under Section 501 (c) (3). It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is services generally on the subject of data collection, processing, editing, mapping, integrating, validation testing, consolidation and data set management, such services herein collectively referred to as the Vermont Healthcare Claims Uniform Reporting and Evaluation System (VHCURES). Detailed services to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed **\$2,438,296.00**. The State does not guarantee the assignment of any minimum number of hours or other work under this contract.
4. **Contract Term.** The period of Contractor's performance shall begin on **9/1/11** and end on **8/31/14**.
5. **Prior Approvals.** If approval by the Attorney General's Office, Secretary of Administration or the CIO/Commissioner DII is required (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by any or all such persons.
  - Approval by the Attorney General's Office **is** required.
  - Approval by the Secretary of Administration **is** required.
  - Approval by the CIO/Commissioner DII **is** required.
6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This contract may be canceled by the State by giving written notice at least 30 days in advance. The Contractor may cancel this contract by giving 120 days written notice in advance.
8. **Attachments.** This contract consists of **21** pages including the following attachments which are incorporated herein:
  - Attachment A - Specifications of Work to be Performed
  - Attachment B - Payment Provisions
  - Attachment C - Standard State Contract Provisions
  - Attachment D - Other Contract Provisions.

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

By the STATE OF VERMONT

Date:           *SW - Kimbell* 10/27/11          

Signature: \_\_\_\_\_

Stephen W. Kimbell, Commissioner  
Banking, Insurance, Securities & Health Care  
Administration

By the CONTRACTOR

Date:           10/24/11          

Signature:           *JH Harrison*          

James H. Harrison, President/CEO  
Onpoint Health Data

**Attachment A**  
**Specifications of Work to be Performed**

As directed by the State, Contractor shall do the following.

1. General Contract Responsibilities

- 1.1 Contractor shall identify a Project Manager as contact person to oversee the project and serve as point of contact for the State. Contractor shall notify the State immediately if this position is reassigned.
  - 1.1.1 On a monthly basis, or more frequently as requested by the State, Contractor's Project Manager and contract staff shall hold teleconferences at Contractor's expense with State staff and participating data reporting entities ("reporters") as needed to discuss project progress, concerns, and next steps.
  - 1.1.2 Beginning in the first month of the contract and then at least every six months, the Project Manager shall meet in person in Vermont with the State and other parties at meetings convened by the State. Contractor shall provide options for web-based participation in meetings including shared viewing of presentation materials and audio participation.
- 1.2 Key project staff shall be readily accessible by telephone and Email to consult with the State as requested.
- 1.3 Contractor shall not charge the State for staff time required to prepare and transfer limited use healthcare claims research data extracts to approved users. Contractor may bill approved users that are not Vermont State agencies for the staff time required to prepare and transfer limited use health research data extracts at a base price of **\$5,200.00** for up to 5 years of consolidated eligibility, claims data and supporting documentation and look-up tables. Contractor may bill Vermont State agencies approved by the State to receive the same comprehensive standard files due to the State under Section 6.1 of this contract the cost of material, shipping and handling. Contractor shall limit billing requestors for the public use file to the cost of materials, shipping and handling not to exceed \$25.00 in total per annual consolidated file.
- 1.4 At the conclusion of the contract, Contractor shall, at the State's sole discretion and as is reasonably practicable, return or destroy all Data in the possession or under the control of Contractor.
- 1.5 "Data" means all eligibility and claims data received by Contractor from the State and/or reporters pursuant to this contract, as well as the data and other information contained in any reports provided by Contractor hereunder.
- 1.6 Before conclusion of this contract and in the event that the contract is terminated and/or the contract is awarded to another vendor, Contractor shall develop a transition plan for continued operations that shall assist the State in maintaining timely collection of the data upon expiration of the contract. Contractor shall cooperate with complete and timely transfer of the Data and Technical Documentation in the event that the contract is awarded to a new Contractor.

- 1.7 “Technical Documentation” means the technical documentation required by the State that will assist authorized users to navigate and use the Data, including a description of the data sets, file lay out, data dictionary with field definitions and codes used, and value-added tables.
  - 1.8 All Data received or generated by Contractor under this contract is the property of the State. The State shall own the Data. Per applicable state and federal law and any data use agreements in place with state and federal agencies pertaining to Medicaid and Medicare data, the State shall administer policies and procedures for the collection, management, release and final disposition of all such Data.
2. Data Collection, Processing, Editing, Validation Testing, Consolidation and Database Development
- 2.1 Contractor shall integrate historical data already residing in the VHCURES consolidated database and continue to collect the required claims, eligibility and other related data files from mandated reporters as required by the State per Division of Health Care Administration Regulation H-2008-01 and from voluntary reporters with data already residing in VHCURES. Contractor shall integrate Medicaid and Medicare eligibility and claims data into the VHCURES consolidated data set starting with the incurred service data of January 1, 2007 and moving forward on a rolling monthly basis as current in the standard format specified in Regulation H-2008-01 with modifications as approved by the State. Contractor shall map and integrate the Medicaid and Medicare eligibility and claims data to meet the VHCURES specifications commonly applicable to Commercial, Medicaid, and Medicare. Contractor shall also retain fields and data elements unique to Commercial, Medicaid and Medicare that will support analytical capability of both the integrated all-payer data set and also stand-alone files for each payer type including Commercial, Medicaid, and Medicare. Contractor shall apply quality assurance edits, request and process submissions of corrected files, finalize and certify data submissions, apply appropriate validation testing to identify anomalies requiring further investigation and possible resubmission of corrected data, process resubmitted data, and consolidate data. As permitted under federal and state laws, rules, and data use agreements the State anticipates diverse uses for the VHCURES Data and services.
  - 2.2 Contractor shall recommend modifications to the data submission requirements currently embodied in Division of Health Care Administration Regulation H-2008-01 as needed based on the most current standards for claims, eligibility and other relevant administrative health data that will support the diverse and evolving reporting needs of the State. Contractor shall provide technical assistance to the State for discussions with other entities regarding potential modifications to data submission requirements.
  - 2.3 Contractor shall collect, process, edit, test, and consolidate eligibility and medical and pharmacy claims data from mandated reporters in the commercial insurance sector including health insurers, TPAs and PBMs for comprehensive major medical plans, Medicare Supplement policies and Medicare Parts C and D. Contractor shall collect, process, map, integrate, edit, test, and consolidate eligibility and medical and pharmacy claims data for Vermont Medicaid enrollees from the State Medicaid program as provided by the Department of Vermont Health Access (DVHA) and eligibility and medical claims data for Vermont Medicare beneficiaries from the Centers for Medicare and Medicaid Services (CMS) as provided to the State as the licensee and the Contractor as custodian. Contractor shall provide technical assistance to the State and map and integrate the Medicaid data to meet the VHCURES reporting requirements in a manner consistent with meeting the reporting broader need of the State to develop all-payer capability and also meet the unique

reporting needs of the Medicaid and Blueprint for Health medical home programs. Contractor shall provide technical assistance to the State and map and integrate the Medicare data to meet the VHCURES reporting requirements in a manner consistent with meeting the reporting broader need of the State to develop all-payer capability and also meet the unique reporting needs of the Blueprint for Health medical home program. For the purpose of accurately attributing both medical and pharmacy claims to individual Vermont Medicare beneficiaries, Contractor shall test, evaluate, and perform linkage between the Medicare eligibility and medical claims files provided by CMS and the VHCURES Medicare Part D eligibility and pharmacy claims files provided by commercial insurers including pharmacy benefit managers (PBMs). Contractor shall work with the State to evaluate the accuracy of linkage and completeness of capture of pharmacy claims for Vermont beneficiaries enrolled in Medicare Part D as collected by the VHCURES program.

- 2.4 Contractor shall accept and process claims data from mandated and voluntary reporters which may be submitted utilizing any one of the following media or transmittal methods: CD, DVD, and secure SSL web upload interface. Contractor shall make a reasonable effort to accommodate methods preferred by reporters while maintaining optimal security standards. Contractor shall meet security standards for Medicare data containing individual identifiers as specified in the CMS Data Use Agreement Form CMS-R-0235 under section #7 as the State's (CMS licensee) designated custodian (CMS custodian).
- 2.5 Contractor shall provide web-based and secure access to: streamlined and consolidated on-line registration that supports State registration requirements and collection of information for TPAs and PBMs and registration of mandated reporters to support the data submission process; file submission instructions; reporter-specific secure access for on-line file submission; and access to status and error reports and other necessary information. Contractor shall consult with the State by every October about whether the State intends to modify the on-line registration form on an annual basis preceding each annual registration deadline of December 31.
- 2.6 Contractor shall provide the State with weekly, monthly and quarterly reporter-specific reports that support compliance monitoring. Contractor shall provide comparative reporting on annual registration of insurers, TPAs, and PBMs by March 1 of every year following the registration deadline of December 31 that identifies estimated enrollment for each enrollee, entities that registered the prior year but did not register for current year, and new entities that did not register for prior years. Reports include, but are not limited to the following: TPA and PBM registration report that includes company name, contact information, DBA, Parent Company, and services provided; registration and reporting status related to data submission (whether the reporter meets data reporting thresholds and what files are required); file submission status including Pass/Fail dates; and summary error reports. Contractor shall give high priority to generating timely compliance reports monitoring the performance of major health insurers with significant market share in Vermont including both commercial insurers and participating government insurers.
- 2.7 Contractor shall provide robust data editing and data quality assurance checks, including validation reports to identify significant reporting anomalies, replacement of resubmitted data, and storage of the consolidated data sets through the following activities:
  - 2.7.1 Contractor shall edit all submitted data for completeness and data quality, reject or accept files based on completeness and data quality, and provide reporters with edit check reports on a timely basis. General areas for edits include checking for missing records, missing

values, invalid entries, duplicate records, and compliance with State data submission requirements. Contractor shall employ validation reports comparing values across multiple fields and multiple insurers in similar lines of insurance business to identify anomalies requiring further investigation. On a timely basis, Contractor shall recommend individual exceptions to error thresholds to support timely data consolidation in a manner that does not significantly compromise data integrity and changes to error thresholds to support the State's changing reporting needs.

- 2.7.2 Contractor shall notify both mandated and voluntary reporters at 15, 30, and 60 days following submission due dates about non-filing of required reports and/or non-compliance with data submission requirements and include this information in reports to the State as noted in section 2.7.
- 2.7.3 Contractor shall accept and consolidate additional or corrected records from prior periods that are resubmitted by reporters, replacing or deleting records as needed. Contractor may manually perform corrections.
- 2.7.4 Contractor shall generate and submit a final exception of error report to the State specifying the rates of all data elements submitted in each reporting period for each mandated reporter compared to the State's threshold and variances granted by the State.
- 2.8 Contractor shall provide technical assistance on development and interpretation of customized fields and data elements including local procedure codes. Contractor shall purchase and provide the State two (2) sets of comprehensive coding manuals that include commercially available coding manuals for each year of release of the coding systems.
- 2.9 Contractor shall maintain on and offsite backup copies of the files and datasets submitted by reporters and as consolidated and finalized by the Contractor in a secure location that meets security standards for Medicare data containing individual identifiers as specified in the CMS Data Use Agreement Form CMS-R-0235 under section #7 as the State's (CMS licensee) designated custodian (CMS custodian).
- 2.10 Contractor shall provide the State with any information, recommendations, and technical assistance perceived as useful by Contractor or as might be requested by the State to improve ongoing collection, processing, editing, mapping, integration, validation, consolidation, and database management efforts.
- 2.11 Contractor shall be strictly prohibited from releasing or using data or information obtained in its capacity as a collector and processor of the data for any purposes other than those specifically authorized by the State, except Contractor may disclose such data or information as required by law and may use such data or information for the proper management of Contractor or to carry out its legal responsibilities as allowed by HIPAA. In no event shall Contractor sell the State's data or otherwise use it for purposes other than those authorized by this contract. Failure to comply could be a violation of Vermont laws and rules and lead to enforcement actions including potential voiding of the contract.
- 2.12 Contractor shall perform provider linkage to support the maintenance of a VHCURES provider database and a Master Provider Index (MPI) to facilitate the following: accurate attribution of claims

records to single providers or provider groups; aggregation of claims for single provider or groups of providers with the same specialty code; attribution of members to single providers and provider groups that can be further categorized by specialty code type such as primary care and other specialty types; and attribution of providers to injury/illness types. Contractor shall perform provider linkage to resolve provider identity with their unique NPI number.

2. 12.1 Contractor shall coordinate with the State Master Provider Directory initiative that is developing authoritative master provider indices for the Agency of Human Services enterprise architecture that will serve the state Medicaid Program, the Vermont Health Information Exchange, the Vermont Health Benefit Exchange, and other purposes as directed by the State in regard to an aggregated approach, methods, and use of other data sources with provider information.

2.12.2 Contractor shall work with the State to obtain other data sources with provider information that would be useful for provider linkage.

2.12.3 Contractor shall inform the State about problems encountered in the VHCURES data submissions that are crucial to support the MPI and recommend strategies for corrections and improvements.

### 3. Summary Reporting: Data Quality, Completeness and Timeliness

3.1 Contractor shall consult with the State regarding the approach and methods that are used to generate unique identifiers for individual persons (i.e., patients, members, enrollees, beneficiaries) to support assignment of claims to individuals within and across insurers and payers within the VHCURES data set. Contractor shall be available upon the request of the State to consult with other parties working to build a Master Patient/Person Index or to identify unique individuals in eligibility and claims files who may have multiple payers or change payers over time to explain the method used to assign unique person identifiers in the VHCURES database.

3.2 Contractor shall be available upon the request of the State to consult with other parties involved in initiatives to develop a Master Provider Index or Directory and/or projects requiring the assignment of claims to service providers regarding how the Master Provider Index is developed and maintained for the VHCURES program.

3.3 In addition to the edit reports referred to above in section 2.7, Contractor shall provide semi-annual and annual reports summarizing the quality, completeness and timeliness of the data including validation reports on the quality of data for fields that are crucial for meaningful analysis of enrollment, utilization and cost related to both members and providers. Contractor shall recommend solutions for problems and deficiencies identified.

### 4. Ensure Secure Data Collection, Storage and Management

4.1 Contractor shall supply a one-way encryption method and provide software to allow reporters to encrypt specified fields prior to submission of the required files to the State including direct and indirect identifiers within the required claims and eligibility data files to minimize risk of identification of individuals in the data set and to support the generation of unique person identifiers for members. Contractor shall employ a two-way encryption method for Medicare data with

individual identifiers as provided by CMS to the State (licensee) and Contractor (custodian) that allow Contractor to encrypt specified fields to support inclusion of de-identified Medicare data in the multi-payer VHCURES data set and also support the inclusion of Medicare data with identifiers in a secured data set that will be excluded and partitioned from the VHCURES de-identified data set and will only be available in a separate identified data set to users authorized by the State as the CMS licensee.

- 4.2 Contractor shall obtain approval from the State for use of a specific encryption method and/or software application prior to implementation.
  - 4.3 Contractor shall ensure proper use of the encryption method by reporters through training and test data submission prior to acceptance of files containing fields that the State requires to be encrypted and un-encrypted as in the specific case of Medicare data.
  - 4.4 Contractor shall monitor use of the encryption tools and ensure that reporters are applying it correctly to the data sets on an ongoing basis.
  - 4.5 Contractor shall notify the State of persistent encryption problems attributed to specific reporters or with the encryption methods used.
  - 4.6 Contractor shall be strictly prohibited from collecting any unencrypted data in fields that are required to be encrypted under Division of Health Care Administration Regulation H-2008-01 with the exception of data from voluntary reporters such as Medicare and Medicaid that may request inclusion of unencrypted identifiers in a separate data set excluded from the VHCURES de-identified data set.
  - 4.7 Contractor is strictly prohibited from using or disseminating in any way direct personal identifiers or any other protected health information without the express written authorization of the State. Direct personal identifiers include, but are not limited to, individual's name, street address, e-mail address, telephone number, and Social Security number or other information identified by state or federal law as providing a means of direct identification of individuals. Intentional violation of this provision shall result in voiding of the contract and enforcement actions by the State. Contractor shall immediately notify the State in the event of an unauthorized release of protected data.
  - 4.8 Contractor shall employ appropriate and reasonable security measures and technologies to minimize opportunities for intentional or inadvertent unauthorized access to and release of the Data as collected, managed, released and reported consistent with the requirements of this contract including CMS requirements for Medicare data with identifiers as specified in CMS Data Use Agreement Form CMS-R-0235 section #7. Contractor shall provide a detailed plan and description of procedures for the secure receipt, management, storage, release and transmission of data including a disaster recovery plan.
  - 4.9 Contractor shall provide adequate systems backup and recovery procedures to ensure complete restoration of Vermont data within twenty-four (24) hours in the event of a serious incident.
5. Facilitate Efficient Data Collection and Collaboration

- 5.1 Contractor shall have a communications plan and on-line and hardcopy materials to orient reporters to the reporting requirements and process and other topics requested by the State or deemed helpful by the Contractor to improve the efficiency and quality of data submissions.
- 5.2 Contractor shall facilitate efficient and timely registration of insurers and data submission from both mandated and voluntary reporters through use of the following tools:
  - 5.2.1 Contractor shall publish a quarterly newsletter to be circulated to reporters and other interested parties as identified by the State and posted on the Contractor's website to provide a status report on VHCURES, tips for registration and data submission, troubleshooting advice for errors and problems frequently encountered in file preparation and submission, and other information as needed or requested by the State;
  - 5.2.2 Contractor shall issue serial automated reminders of pending and past deadlines and compliance gaps that include firm language with options for assistance and contact information that would be helpful to mandated registrants and reporters
  - 5.2.3 Contractor will initiate and/or participate in periodic meetings to be held in Vermont and/or by teleconference for the purpose of reviewing, clarifying, troubleshooting, and revising policies and procedures for registration and data submission as requested by the State and recommended by the Contractor to improve efficiency and quality of the processes; and
  - 5.2.4 Contractor will support individualized orientation and technical assistance to new reporters as well as established reporters as needed to support efficient, accurate, and timely registration and data submission and other requirements as directed by the State.
- 5.3 Contractor shall maintain a contact information database for use by the Contractor and the State with adequate detail required for timely contact including company names, company registration and/or registration codes, company contacts and titles, mailing and email addresses, and telephone numbers for all registered entities and reporters. Contractor shall provide monthly updated contact information for companies including registration contact, compliance contact, and other contacts.
- 5.4 Contractor shall maintain an automated tracking system for all reporters: such system shall include but not be limited to inquiries, communications, and complaints from receipt to final disposition and shall provide reports as requested by the State as needed to track compliance, enforcement cases, and other issues.

## 6. Data Access Services

- 6.1 Contractor shall provide the State (including other authorized Vermont state agencies) secure quarterly data files on optical media according to the schedule below:
  - 6.1.1 Contractor shall provide the State (including other authorized Vermont agencies) quarterly consolidated data sets in a compressed and encrypted format on USB storage media. These quarterly data sets are complete replacement data sets, incorporating any new or changed records since the previous quarterly extract, along with historical claims records. Files shall be supplied in a delimited text file, and/or in other standard format as specified by the State.

At the discretion of the State, the method of transmittal of the datasets can be changed, and file format changed, to utilize secure FTP transmittal to the State.

- 6.1.2 Contractor shall provide the State (including other authorized Vermont state agencies) with up to three quarterly, consolidated, comprehensive standard State data sets that include Commercial, Medicaid and Medicare eligibility and medical and pharmacy claims as authorized by the State (CMS licensee) with data mapped to a common standard, encompassing additional fields and data elements that are unique to each payer type. On a quarterly basis, Contractor shall provide the State with up to three stand-alone data sets for Commercial eligibility and medical and pharmacy claims only to be shipped to each authorized Vermont state agency as soon as consolidated and finalized. Contractor shall provide quarterly consolidated data sets to the State within thirty (30) days of the close of each 90-day reporting period for adjudicated claims as available. Quarterly files provided to the State shall also include technical documentation required by the State to navigate and use the consolidated data sets including a description of the data sets, file lay out, data dictionary with field definitions and value-added look-up tables. Contractor shall provide technical assistance to the State as requested to support State access to - and use of - the quarterly and annual consolidated data sets.
  - 6.1.3 Contractor may bill authorized Vermont state agencies approved to receive the comprehensive standard State files identified under section 6.1.2 for the cost of material, shipping and handling.
  - 6.1.4 Contractor shall work with the State to investigate and rectify errors discovered in the consolidated data sets by the State and authorized data users.
- 6.2 Contractor shall create, maintain, and distribute a public use file (PUF) as specified in Division of Health Care Administration Regulation H-2008-01.
- 6.2.1 Contractor shall produce PUF versions of the finalized consolidated Commercial data set on an annual calendar year basis to be available by September 15 for the prior incurred calendar year. If requested by the State, Contractor shall work with the State to develop potential PUF versions of Medicaid and Medicare data sets (encompassing only those elements consistent across all payer types) as requested by the State. The annual PUF shall be distributed to the public as requested in electronic media and also include technical documentation for users including a description of files, file lay out, data dictionary with field definitions and citations for the State's web site for additional information about VHCURES.
  - 6.2.2 Contractor shall supply the PUF to approved users as requested by the State and limit billing to the cost of materials, shipping and handling not to exceed \$25.00 in total per annual consolidated file.
  - 6.2.3 Contractor shall supply data files as compressed delimited files or in another format as requested by the State with documentation sufficient to allow third parties receiving the data to load the data into their systems and to navigate the files.

- 6.3 Following written notification with State approval of a customized data release to an authorized user, Contractor shall supply customized data file extracts and necessary technical documentation to State-approved parties. As the owner of the Data, the State shall administer policies and procedures for the collection, management and release of the Data.
- 6.3.1 Approved limited use healthcare claims research data sets may include subsets of records and subsets of fields as requested by the State to meet the conditions of data use agreements between the State and approved data users. The State will specify the approved release of records and fields in the data use agreement between the State and licensed users.
- 6.3.2 Contractor may bill approved users that are not Vermont State agencies or State-designated entities receiving the standard State files specified under section 6.1.2 of this Agreement for the staff time required to prepare and transfer customized limited use healthcare claims research data extracts at a base price of \$5,200.00 for up to 5 years of consolidated eligibility, claims data and supporting documentation and look-up tables. Contractor may bill authorized users for consulting services and technical assistance related to use of approved VHCURES data extracts.
- 6.3.3 Contractor shall describe in detail procedures to ensure the secure release of limited use healthcare claims research data sets as authorized by the State. Such description shall include procedures, requirements and methods for authentication of the data requestor receiving the files, procedures for secure transmission and acknowledgement of receipt and final disposition of released files. The State must approve these procedures prior to implementation.
- 6.3.4 Contractor shall maintain and provide a detailed log to the State detailing authorized data releases including contact information for licensees and/or designated data custodians to whom the data files were released.
- 6.3.5 Contractor shall promptly notify the State about any actual or potential breaches of security or inappropriate use, release or transfer of data of which it becomes aware consistent with its obligations under all applicable federal and state laws and regulations, including HIPAA, and data use agreements between Contractor and the State and federal governments.
- 6.3.6 Contractor shall be strictly prohibited from releasing or granting access to the Data, unless expressly authorized by the State in writing and as specified in data use agreements approved by the State.

## 7. Work Plan, Time Line, and Progress Reports

Contractor shall develop and obtain approval from the State on a Project Plan and Time Line addressing all sections of the specifications of work to be performed in this Agreement. Contractor shall provide monthly summary and quarterly detail progress reports keyed to the Project Plan and Time Line that identify performance and accomplishments, challenges encountered, proposed and active solutions, and approved modifications to the approved Project Plan and Time Line.

- 7.1 Contractor shall submit a draft Project Plan and Time Line to the State for review within thirty (30) days of the start date of this Agreement. The Project Plan and Time Line shall be structured to address all sections and subsections included in the scope of work for this Agreement. Contractor shall submit a final Project Plan and Time Line upon receipt of feedback from the State. Contractor shall request approval from the State for modifications to the plan and time line and update the plan and time line as needed to keep the plan and time line current.
- 7.2 Contractor shall submit to the State monthly summary progress reports keyed to itemized monthly invoicing that addresses all relevant sections of the Project Plan and Time Line for each monthly billing period. Monthly progress reports shall identify performance and accomplishments underpinning the itemized billing.
- 7.3 By the fifth business day of the month following the last day of the last month in each quarter, Contractor shall submit a detailed quarterly progress report tied to the Project Plan and Time Line and include the following information:
  - 7.3.1 Contractor shall provide a detailed review of progress made during the quarter and for the entire Project Plan to date in each of the sections and subsections included in the specifications of work to be performed in this Agreement.
  - 7.3.2 Contractor shall provide an explanation for failure to deliver services in a timely or complete manner as specified in the Project Plan for the specification of work to be performed in this Agreement. Contractor shall provide a detailed description of delays and challenges encountered, proposed or active solutions being deployed to rectify the situation, and results of deploying solutions. At the State's sole discretion, failure to provide satisfactory service or reports may result in immediate termination of the contract by the State.
  - 7.3.4 Contractor may request to modify the Project Plan and Time Line. All changes to the plan and time line are subject to the prior approval of the State.
- 7.4 Contractor shall provide an annual progress report on the 15<sup>th</sup> day of the month following the end of each year of the contract that provides a detailed annual summary of accomplishments tied to the Work Plan and Time Line addressing all the sections and subsections included in the specifications of work to be performed for this Agreement. Contractor shall review all the preceding quarterly reports and provide a detailed summary report addressing delays and challenges encountered, proposed or active solutions being deployed to rectify the situation, and results of deploying solutions. For the annual report for the final year of this Agreement with the final invoicing for reimbursement, Contractor shall provide a detailed review of the operations under this contract and final status of contract deliverables, including identification of successes; a discussion of problems encountered and resolved or outstanding, and recommendations for changes that would support success in continuing operations.
- 7.5 Contractor shall provide ad hoc progress reports in writing as requested by the State.
- 7.6 Contractor shall submit reports required by the State via electronic mail to the State Project Manager in MS Word, Excel or PDF formats in printer-ready formats.

- 7.7 The State will not accept any report or deliverable that it deems to be out of compliance in form and content with the terms of the contract or which is not compatible with the systems specifications supplied by the State.

**Attachment B  
Payment Provisions**

1. The maximum amount payable under this contract for service and expenses shall not exceed **\$2,438,296.00**. The State does not guarantee the assignment of any minimum number of hours or other work under this contract. The hourly rate for staff is as follows:

<b>Job Title</b>	<b>Hourly Rate</b>
Project Manager	\$250
Technical Services Mgr	\$250
Technical Consultant	\$250
Data Operations Mgr	\$175
Data Operations Staff	\$110
Technical Staff	\$150

The total cost for each employee category as specified above includes any indirect rate that covers the administrative expenses, occupancy fees, utilities, repair and maintenance of equipment, office maintenance, audit and legal fees, insurance, telephone, postage, supplies, etc. The State does not guarantee the assignment of any minimum number of hours or other work under this contract.

2. The State shall reimburse Contractor for reasonable and necessary expenses incurred in the performance of this contract. Total travel expenses under the contract shall not exceed **\$9,600**. A billing for mileage shall include the points of origin and destination and the number of miles traveled.
3. Contractor will submit an invoice on a monthly basis to the State for services provided and expenses incurred during the previous month. Invoice must include unique invoice number, dates of service, itemized hours assigned to unique staff, a list of allowable expenses incurred and itemized billing that must be documented and linked on an itemized basis to the monthly progress report to be submitted with each invoice.
4. Invoices shall be submitted to:

**Andrea Grishman  
Health Care Administration  
89 Main Street  
Montpelier, VT 05620-3101**

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

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

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

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

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

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party

for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

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

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

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

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

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

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

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

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

Professional Liability: Before commencing work on this contract and throughout the term of this contract, the Party shall procure and maintain professional liability insurance for any and all services performed under this contract, with minimum coverage of \$1,000,000.00 per occurrence.

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than \$500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: <http://finance.vermont.gov/forms>

**10. Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

**11. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 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 that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

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

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

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

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

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

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

- 15. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.
- 16. No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
- 17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
- 18. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.

(End of Standard Provisions)

## ATTACHMENT D OTHER CONTRACT PROVISIONS

### 1. Confidentiality

Contractor agrees to keep information related to the State and all agencies and companies related to this contract confidential and agrees not to use any information obtained in relation to the services performed under this contract for any purpose other than as authorized by the State. Contractor agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner or form or authorize or permit others to do so, except as authorized by the State. Contractor will take reasonable measures as are necessary to restrict access to confidential information in the Contractor's possession to those employees who must have the information to perform their job. Contractor agrees to promptly notify, in writing, the State's authorized representative in the event Contractor determines or has reason to suspect a probable or an actual breach of this requirement of which it becomes aware consistent with its obligations under all applicable federal and state laws and regulations, including HIPAA and data use agreements between Contractor and state and federal agencies.

Notwithstanding the foregoing, Contractor's confidentiality obligations do not apply with respect to any information to the extent that the information in question: (i) was in the possession of, or was rightfully known by, the Contractor without an obligation to maintain its confidentiality prior to being received pursuant to this Contract; (ii) is or becomes generally known to the public without violation of this Contract or any other agreement by the Contractor; (iii) is obtained by the Contractor in good faith from a third party who does not have an obligation to maintain its confidentiality; (iv) is independently developed by the Contractor without the participation of individuals who have had access to the information received pursuant to this Contract, or (v) is required to be disclosed by applicable law.

Nothing herein shall be construed to prohibit or limit Contractor from performing services for other clients, or from using any intangible, residual know-how or general knowledge or concepts acquired during the course of providing services under the Contract, so long as Contractor complies with its confidentiality obligations hereunder.

The State agrees to keep confidential any information related to Contractor's operations which constitute trade secrets exempt from public disclosure as defined by Vermont law, (e.g. its information security program) furnished to the State hereunder and agrees not to use or disclose any such information for any purpose other than as expressly authorized by the Contractor in writing. Contractor shall notify the State when Contractor considers shared information a confidential trade secret.

### 2. Obligations Regarding Protected Information

Contractor shall comply with its obligations under HIPAA and other applicable state and federal laws and data use agreements between Contractor and state and federal agencies regarding protected health, personal or otherwise confidential information and, if requested by the State, shall assure the State of Contractor's compliance as required by law.

### 3. Conflicts of Interest

If the State determines that a conflict of interest, as defined by the State, exists between a regulated entity and a member or members of the Contractor's staff, the Contractor shall substitute similarly qualified individuals for the conflicted members. If the State determines that a conflict of interest, as determined by the State, exists between Contractor and regulated entity, the State may immediately remove that assignment from the Contractor, or may

invoke its right to terminate this contract pursuant to paragraph 7 on page 1 of this contract. The State reserves the right to make the ultimate determination as to whether a conflict of interest exists.

4. Protection of Personal Information

Contractor agrees to establish and maintain policies and procedures designed to ensure compliance with 9 V.S.A. Chapter 62 (Protection of Personal Information) with respect to data collected in connection with Contractor's activities pursuant to the Contract.

5. Definitions

"Authorized Users" means the employees and reporters authorized by the State to access and use System.

"Documentation" means the user manual and training materials concerning the ONPOINT CDM, in printed or electronic format, which Contractor has provided to State, as updated from time to time.

"Improvements" means all updates, upgrades, modifications, customizations, enhancements, error corrections, and other changes to derivative works based on the ONPOINT CDM and Documentation, regardless of by whom made. Improvements does not include Data.

"Material Default" by the State means that an approved payment to Contractor is at least thirty (30) days past due, that Contractor has provided the State with written notice of the past due payment and that the State has failed to make the payment within (45) days of the written notice.

"ONPOINT CDM" means Contractor's proprietary **Onpoint Claims Data Manager** system, including, without limitation, all internal processing systems and hardware, external interfaces and tracking, communication and administration features thereof, as well as all software, code and/or algorithms incorporated therein, each as updated from time to time.

"System" means the ONPOINT CDM, Documentation and Improvements, including all patent, copyright, trademark, trade secret and other proprietary rights related thereto.

6. Ownership of System; Use of the System

The System is and shall remain the sole and exclusive property of Contractor. Subject to the terms, conditions and limitations of this Contract, and provided State is not in Material Default of the Contract terms, Contractor hereby grants to State the non-exclusive, non-transferable right and license during the term of the Contract to: (a) allow authorized users to access and use the System for the purposes contemplated herein; and (b) use, reproduce and distribute copies of the Documentation solely in support of the State's use of the System.

7. Restrictions

The State shall not (i) use the System in any manner which is not authorized by this Contract or which violates any applicable law; (ii) copy or reproduce the System, in whole or in part; (iii) modify, translate or create derivative works of the System; (iv) reverse engineer, decompile, disassemble or otherwise reduce the System to source code forms; (v) distribute, sublicense, assign, share, timeshare, sell, rent, lease, grant a security interest in, use for service bureau purposes or otherwise transfer the System or State's right to access and use the System; or (vi) remove

or modify any copyright, trademark or other proprietary notice of the System of its licensors. All rights not expressly granted hereunder are reserved to Contractor and its licensors.

8. Disclaimer

Contractor and its suppliers and licensors disclaim any implied warranties of merchantability, non-infringement or fitness for a particular purpose, or that the system will operate error-free or uninterrupted and any implied or express warranties arising from trade usage.

9. Limitation of Liability

The State acknowledges that the System is dependent on the State's use of proper procedures and systems and input of correct data. Contractor and its suppliers shall not be liable to the State for any loss or damage resulting from lost data or information resulting from breaches of data security, except to the extent such loss or damage is attributable to the negligence or willful misconduct of Contractor, its employees, agents or contractors or its suppliers. Notwithstanding the foregoing, in the event data or information is lost due to any act or omission by Contractor or its suppliers, or due to breach of any warranty, Contractor shall use its best efforts to recover the lost data or information resulting from breaches of data security at no charge to the State. This contract is not intended to confer any rights on third parties.

10. Protect Assumptions

The following assumptions detail those conditions that must be satisfied so that the contract objectives are met, and without which the contract will likely not succeed. In addition, these assumptions are factored in during the costing process of the Contractor's fee proposal and may be affected if they are not met.

- The State and the reporters each will timely perform their respective tasks as described and agreed upon.
- The State's authorized representatives will reasonably be available during the project lifecycle to approve plans, sign off on deliverables, and confirm project closure.
- The State will provide in a reasonably timely manner information, resources and other cooperation reasonably necessary for Contractor's performance and delivery timeframes.

The State acknowledges that Contractor will rely on the accuracy and completeness of any information and materials provided by State, and agrees that all information disclosed to Contractor is (or will be at the time of disclosure) true, accurate and not misleading in any material respect. Contractor shall have no obligation for failure to provide services in accordance with this Contract to the extent such failure is caused by inaccurate or incomplete information provided by the State.

11. Force Majeure

Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable efforts to promptly correct such failure or delay in performance.

12. Change Process

The State may, at any time during the term of the contract, request a modification to the specifications, or an addition or reduction, or other change in the scope of the contract or the implementation plan for the contract (collectively, a "Contract Modification"). If the State desires such a modification, the State shall notify Contractor in writing, describing in detail the requested Contract Modification. To the extent the requested Contract Modification requires additional work or investigation to respond to the requested Contract Modification, Contractor will advise the State and request authorization to proceed with such investigation, including whether time spent performing such investigation would be chargeable on a time and materials basis. If Contractor believes that any proposed Contract Modification is impracticable or would impair the integrity of the System, Contractor shall immediately, and in no event more than fifteen (15) days after receipt of a Contract Modification request, advise the State in writing that the request cannot be accepted ("Impossibility Notice"). Within thirty (30) days after Contractor's receipt of a Contract Modification request, or such later date as may be agreed by the parties where investigation is required, Contractor will provide a final response. If Contractor accepts the Contract Modification request, the parties shall negotiate the necessary adjustments to achieve such Contract Modification and any necessary changes to the terms of this contract.