



VERMONT INFORMATION TECHNOLOGY LEADERS

REQUEST FOR Proposals

FOR

Health Information Exchange Platform

ISSUE DATE: 5/15/2025

RESPONSE DATE: 6/13/2025

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## Request for Proposals for Health Information Exchange Platform

### Introduction

Vermont Information Technology Leaders (VITL) is conducting this Request for Proposals (RFP) to identify a contractor to provide a comprehensive health information exchange (HIE) platform that will facilitate the secure and efficient exchange of health data across organizations and systems caring for Vermonters. This RFP process is a way of ensuring VITL is able to bring the latest advancements in health information technology and interoperability to Vermont providers and patients, while continuing to be effective stewards of our funding. For prospective vendors, this is an opportunity to work with a dynamic, mission-driven health information technology nonprofit that makes a difference every day in the health of Vermonters. Through this RFP, VITL is seeking information about the capabilities of current health information exchange solutions, and the costs associated with implementing and operating those solutions.

### About VITL

VITL is legislatively designated to operate the Vermont Health Information Exchange (VHIE), a secure, statewide data network that gives health care organizations in Vermont the ability to electronically exchange and access their patients' health information in order to improve the quality, safety, and cost of patient care. Our primary goal is to create one health record for every Vermonter.

The data is made available to stakeholders, including participating health care organizations, to inform providers' point-of-care decisions; to OneCare Vermont and the Vermont Blueprint for Health for their work to improve and reform care; and to the Vermont Department of Health to support public health efforts in service of all Vermonters. VITL creates ways for providers to securely access the data about their patients that is in the Vermont Health Information Exchange. VITL services include a secure web portal for looking up patient information, integration with some electronic health records to enable providers to see everything they need in one place, and behind-the-scenes delivery of ~1.4 million clinical messages a year in the form of laboratory results, radiology reports, and transcribed reports.

More information about VITL and the VHIE are included in Appendix 1.

### VITL Point of Contact

The sole point of contact for this RFP is listed below. Reaching out to anyone other than the primary point of contact for this RFP could be a reason for disqualification.

Beth Anderson  
RE: RFP – HIE  
Vermont Information Technology Leaders, Inc. (VITL)  
150 Dorset St.  
Suite 245, PMB 358  
South Burlington, VT 05403-6238  
banderson@vitl.net

## Pertinent Dates

**Deadline for vendors to submit responses:** Final proposals ***must be received by VITL by June 13, 2025 at 12:00pm Eastern***. Submit your response via email to the VITL point of contact at the email address provided.

**Vendor meetings & VITL response to questions:** VITL will schedule a meeting with each interested vendor during the week of May 27 to address questions each vendor may have. Any vendor wanting to meet with VITL must submit a request for a meeting by 3:00pm Eastern on May 23, 2025, and must submit any questions they anticipate asking by that date. VITL's time for meetings will be limited, and vendors are expected to be available to attend as scheduled by VITL. VITL will consolidate questions and answers it believes are pertinent to a successful response and share those when completed.

**Vendor demos:** VITL anticipates selecting a shortlist of vendors to progress in the process by June 30, 2025. VITL will notify any vendors progressing to the shortlist as soon as the decision is made. All shortlist vendors will be required to provide a demo of their solution to the VITL team in July. An outline of the demo format will be provided to all shortlisted vendors prior to the demos.

**Anticipated vendor selection:** No later than August 1, 2025

**Desired project initiation:** VITL's goal is to have a project kick-off meeting by early September 2025.

## Project Objectives

As VITL plans for the expiration of its current contract for an HIE platform, it is seeking to learn about the current market for HIE platform components, including what capabilities might be available and what the cost of implementation and licensing of these new platform components might be.

To support the HIE services, the solution(s) will need to provide the technology to ensure the system is secure; patients are identified correctly; consent, privacy and confidentiality are protected; and the workflows are efficient and responsive. The platform must be robust and scalable, embracing a modular approach which allows for greater flexibility and the ability to adapt to evolving healthcare standards, regulatory changes, and emerging technologies.

In keeping with this modular approach, the new solution(s) must seamlessly integrate with VITL's existing technologies. VITL will continue to license and operate its Rhapsody integration engine, and the VITL team will build and maintain all of the incoming data interfaces in its existing VPN and Rhapsody infrastructure. Through Rhapsody, VITL currently routes incoming messages to the Verato health data management platform to perform patient identity matching and to a terminology services tool for translation of local codes. Messages would be routed from Rhapsody to the new HIE solution for parsing and delivery to the clinical data repository.

The State of Vermont has plans to create a Unified Health Data Space in order to provide robust analytics capabilities across clinical and other data sets. Any HIE solution will need to be able to support sharing of data for that solution. More information is available in the State's HIE Strategic Plan [https://gmcboard.vermont.gov/sites/gmcb/files/documents/HIEStrategicPlan\\_2024\\_SUBMITTED.pdf](https://gmcboard.vermont.gov/sites/gmcb/files/documents/HIEStrategicPlan_2024_SUBMITTED.pdf)

### Required Capabilities

VITL seeks a modular set of platform components that deliver and enhance the current capabilities offered by its existing platform and also offer additional capabilities that align with our planned roadmap. Our requirements are outlined in the attached Excel file.

RFP responses must include a brief description of how the proposed solution currently addresses each of the Required Capabilities identified within the Excel, with a specific focus on how modularity is incorporated into the design. If the solution does not meet VITL's requirement, please indicate where the capability fits on your roadmap, or if it could be incorporated through modular enhancements or configurations. The response should identify the modular technologies or components that will be used to deliver the capability and must identify any third-party solutions or partners for delivery the capability or solution, ensuring a flexible and scalable approach to integration. Responses must be provided in the Excel spreadsheet provided.

Proposed pricing must indicate if each capability is included in your base pricing proposal, or the additional costs (implementation and ongoing licensing) associated with the capability.

### Response Content & Format

Responders must bid on all required tasks and capabilities outlined in this RFP. All responses must be complete. VITL reserves the right to eliminate any responder whose response is incomplete in VITL's opinion. For submissions to be considered complete, vendors must provide the following information:

1. **Name and contact information:** for the person at your company who VITL should be in touch with regarding your response.
2. **Brief description of your company:** Please provide information such as your full name and address, background and history, areas of expertise, services offered, and your qualifications to provide this solution.
3. **Description of solution:** Please provide a description of your understanding of the scope of this work and your proposed solution. The description must specifically address the Required Capabilities that are identified above, and may include other functional, technical, or security details. Proposals should address:
  - i. HIE systems implementation and operation;
  - ii. Supported standards and versions, including FHIR;
  - iii. Data quality services, cleaning, normalization, and parsing;
  - iv. Identity management services;
  - v. Patient consent management;
  - vi. End user training and support;
  - vii. Behavioral healthcare and substance use disorder clinical data ingestion and management;
  - viii. Public health data exchange;
  - ix. Services for delivering / integrating data to participant electronic health records;
  - x. Analytic and reporting capabilities;
  - xi. Security and privacy; and
  - xii. Other services offered

4. **Completed Required Capabilities Spreadsheet:** A Microsoft Excel file is included with this RFP (Appendix 3), which outlines VITL's requirements for the new system. Please note that the file has multiple tabs; each of the tabs must be completed (except for the data sheet):

- a. System Capability Requirements: Each submitter must provide their responses to each capability within this tab.

Please use the following guidelines to respond to the capabilities in Column D "Vendor Capability Status":

- i. "Live" means the capability is functional, live in production, and implemented and working at a client site.
- ii. "Scheduled" means it is on your product roadmap and there is a specific date identified for its availability for clients. Where you answer scheduled, include the go-live date in the comments section.
- iii. "Future" means the capability is on your roadmap, but not date is scheduled.
- iv. "Not Offered" should be used where the capability does not exist and is not planned.

Please use the following guidelines to respond to the capabilities in Column E "Vendor Cost Included:

- i. "Yes – base licensing" means the component is included in the base, quoted licensing fee in the pricing spreadsheet.
  - ii. "Yes – module" means the component is priced individually in the pricing spreadsheet.
  - iii. "No" means the component is not including in proposed pricing.
- b. Project Management and Delivery: Proposals must include a description of the vendor's approach to the system delivery and project management processes that will be performed throughout the implementation, including the methods, templates, documentation and processes the will be executed. In addition, this tab outlines the project management deliverables which VITL has identified as critical to a successful implementation.
- c. Security Program Expectations: Outlines VITL's security standards to ensure the confidentiality, privacy, integrity, and availability of VITL's data and systems. Proposals must include descriptions of how the proposed solution maintains the standards through the system lifecycle, from implementation through operation and upgrades.

5. **Detailed pricing for implementation and licensing:** Responses must include detailed pricing information for implementation and ongoing licensing of the solution and any variations for volume of messages, subscribers, and/or data senders. The pricing must be provided in the Module and Implementation Cost Breakdown tabs of the attached Microsoft Excel included as Appendix 4.

Pricing presented is expected to be best and final and will be used to guide VITL's decision.

Proposed pricing must include:

- a. All costs incurred during implementation (e.g. implementation, licensing).
- b. Detailed annual licensing and operating costs.

- i. Detailed costs for all platform components (for example pricing for the base platform and pricing for any components that can be licensed (or not) individually).
  - ii. Clarity on when the costs begin (e.g. at implementation, at go live).
  - iii. Assume a contract term of three years with option of three one-year extensions.
- c. Any other costs associated with implementation or ongoing licensing.
- d. Optional or add-on capabilities and services and their associated costs.
6. **Timeline for implementation:** Proposals must include a detailed, achievable timeline for system implementation. The timeline must identify the resources the vendor will commit to implementation. The timeline should identify time commitments and skills required for VITL staff to support successful implementation and operation. Our goal is to complete implementation as quickly as possible, but in a manner that ensures a successful delivery and that is supportable by VITL and any impacted health care organizations. VITL also seeks to kick off implementation as soon as possible, ideally in August 2025; proposals must identify anticipated availability for contract negotiations based on VITL's project schedule, as well as the availability of the implementation team to get started. Specifically, provide the following information:
  - A work breakdown structure of key activities with dependencies and related durations.
  - Activity and task sequencing with resource requirements from the vendor team and VITL.
  - Identification of key deliverables within the plan.
  - Identification of the implementation's critical path with key milestones identified which will be used for progress and status tracking.

The timeline must identify the resources the vendor will commit to implementation. The timeline should also identify the expected time commitments and skills required for VITL staff to support successful implementation and operation.

7. **VITL Roles and Responsibilities:** Please tell us how VITL can be a good partner in ensuring a successful, timely implementation. Please clarify the roles and responsibilities you expect VITL to bring to the project.
8. **Identification of Vendor Team:** Proposals must include detailed information about how the project will be staffed (roles and time commitment). Key project staff must be identified by name and title, with a brief overview of their experience and skills.
9. **Subcontractors:** Subcontractors may be used to perform work under this RFP; subcontractors must be identified in the proposal, with information about their role, scope, and capabilities. Any subcontractors will be required to attest to the same requirements placed on the successful vendor including, but not limited to, state attachments, insurance, and offshore restrictions.
10. **References:**
  - a. Please provide contact information for at least three references for similar organizations where you have implemented your proposed solution. Please include a description of the scope of the project completed, and any lessons learned.
  - b. Please provide the list of any clients you have lost in the last year, and the reason for their departure.
11. **Financial Resources and Responsibility:** Proposals must include information demonstrating the proposing firm's ability to meet its financial obligations and remain a sustainable organization.

Proposals must include the most recent three years audited financial statements (Balance Sheet, Income Statement, and Cash-Flow Statement), including notes. If the last statement is more than 6 months old, please include interim statements signed by an authorized officer as a fair and accurate representation of the organization's financial standing. Similar information must be provided for all subcontractors performing more than 25% of the proposed work. For privately held organizations, VITL is willing to sign a non-disclosure agreement; requests for an NDA must be received by the deadline for questions identified above.

12. **Contracting:** The Contracting section of this RFP, below, includes specification of contract terms and attachments required by VITL. The items in that section must be reviewed by the vendor, and proposals must include the following Attestations:

- a. **Insurance - Attestation:**
- b. **State of Vermont Attachments & Contract Provisions - Attestation**
- c. **VITL Required Contract Provisions – Attestation**
- d. **VITL Business Associate Agreement – Attestation**
- e. **Annual Vendor Attestation - Attestation**

Attestations should confirm the vendor's agreement to and state the vendor's understanding of the requirements.

Responses must be straightforward, clear, concise, and specific to the information requested.

Responses should be submitted in PDF format and be easily printable in 8.5 x 11 format. Send them to VITL's point of contact. Paper responses will not be accepted.

The issuance of this RFP does not constitute a commitment by VITL to award a contract or pay any costs incurred in preparation of a response to this RFP

### Evaluation Process

Each proposal will be scored and ranked against all proposals received. The top respondent(s) will be invited back to deliver a presentation and system demo to VITL and its invited stakeholders.

Information about the format, outline, expectations, and agenda will be provided to those firm(s) invited to advance in the process. Presentations should be focused on the vendor's submitted technical proposal and VITL's questions; they are not an opportunity for a vendor to present new material or capabilities.

Proposals will be evaluated on the following criteria. Please note that demos for invited vendors will be scored separately, and that scoring will be outlined in the materials provided to invited vendors.

Scoring Area	Points Allocated
Completeness of Proposal and Required Attestations	Pass/Fail – those scored as Fail will not be further evaluated
Vendor Qualifications and Experience	10
Vendor Staffing Capacity, Experience and Qualifications	10
Solution Capabilities	35
Project Management Approach	10
Project Schedule	10



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Cost Proposal	20
Additional/Options Items offered	5
<b>Maximum Total Points</b>	<b>100</b>

### Confidentiality and RFP Ownership

VITL reserves the right to recall this RFP in its entirety or in part. Vendors are granted permission to reproduce portions of this RFP only in their responses. Vendors agree that they will not duplicate, distribute or otherwise disseminate or make available this document or the information contained in it without the express written consent of VITL's designated point of contact, identified above. Vendors must ensure that distribution or use of the RFP is limited within their organization and/or subcontractors on a need-to-know basis.

Vendors shall not include or reference this RFP in any publicity without prior written approval from VITL, which, if granted, shall be granted by the designated point of contact. Vendors must accept all of the foregoing terms and conditions without exception. All responses to the RFP will become the property of VITL and will not be returned.

### Disclosure of Response Contents

Cost and price information provided in responses will be held in confidence and will not be revealed or discussed with competitors, except to the extent required by law. All other material submitted becomes the property of VITL and may be returned only at VITL's option. Responses submitted to VITL may be reviewed and evaluated by any person other than competing responders at the discretion of VITL to assist VITL with evaluation of responses. VITL has the right to use any or all ideas presented in any response to the RFP. Where confidential or proprietary information is required, or should the vendor deem it necessary to submit such matter, the vendor must mark each page/section in large bold type (PROPRIETARY INFORMATION).

### Contracting

VITL is subject to State of Vermont contracting requirements. This section outlines specific Agreements and Terms that must be included in any contracting with VITL. VITL will require use of its standard Main Services Agreement (MSA) and Statement of Work (SOW) templates. If the vendor is not willing to use VITL's documents as the foundation for contracting (i.e. would require using their contracts), proposals must clearly state that and include any relevant contract templates.

### 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 this 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 VITL and the State. Minimum coverages are set by the State and adjusted by VITL to ensure adequate coverage of risks. Note that VITL will require different insurance limits from what is included in the State Contract Attachments, VITL's requirements are outlined below. All proposals must include an attestation that the vendor will meet or exceed these requirements.

*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 details about State minimum requirements are at <https://aoa.vermont.gov/Risk-Claims-COI>

*Additional Insured:*

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

*Breach Notification Coverage/ Technology Professional Liability:*

In addition to the insurance required above before commencing work on and throughout the term of any Contract, the vendor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed, with minimum third-party coverage of \$5,000,000 per claim, \$5,000,000 aggregate; (b) first party Breach Notification Coverage of not less than \$10,000,000; and (c) Umbrella Liability coverage for services performed with minimum coverage of \$2,000,000 per claim, \$2,000,000 aggregate.

### *Additional Insured:*

All coverages required for performance shall include the State of Vermont and its agencies, departments, officers, and employees as Additional Insureds. I Additional Insured coverage shall be primary and non-contributory with any other insurance and self-insurance and shall include a waiver of subrogation in favor of the State of Vermont.

VITL requires a Certificate of Insurance as evidence that the vendor meets the requirements listed above, within 15 days of awarding a contract. If a vendor does not have the required insurance levels, within thirty days of awarding the contract, VITL will require proof of insurability, such as a quote from an acceptable carrier with a statement from the vendor of its intention to secure the required policies.

Vendors must submit an attestation agreeing to the insurance requirements with their response.

Before commencing work the vendor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

If a vendor does not have the required insurance levels at the time their response is submitted, VITL will require proof of insurability within 30 days of a vendor being awarded any contract.

### *Required Contract Terms & Attachments*

Appendix 2 includes a set of attachments and terms that must be included in any contract VITL signs for implementation, licensing and ongoing operation of any solution. All proposals must include an attestation from the vendor that they will agree to all of the items specified.

State of Vermont Attachments: VITL's contract with the State of Vermont requires including a set of standard State Attachments in all of its contracts with vendors; these attachments as currently negotiated are included in Appendix 2A. Please note these contract provisions are subject to change annually as VITL negotiates annual contracts with the State of Vermont. Please review the standard State of Vermont Attachments and submit an attestation confirming that you are willing to accept and include these Attachments in a contract with VITL.

VITL Required Contract Provisions: VITL has certain terms that must be included in any contract it signs with the successful vendor, which are included in Appendix 2B. Please review the contract provisions and submit an attestation confirming that you are willing to accept and include these provisions in a contract with VITL.

Business Associate Agreement: Any contract must include VITL's standard Business Associate Agreement (BAA), which is included in Appendix 2C. Please review the BAA and submit an attestation confirming that you are willing to accept and include the BAA in a contract with VITL.

Vendors should review these terms carefully prior to submission of a bid. Contact the VITL point of contact above with any questions or concerns regarding these State of Vermont contracting requirements. Vendors may not request changes to these Attachments or Provisions after submission of their proposal. Any requests to make changes after submitting a proposal may result in VITL's decision to no longer consider that proposal.

### *Annual Vendor Attestation*

Any successful vendor must attest to the following in order to be approved to do work for VITL:

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- Vendor 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.
- Vendor is not on the State's disbarment list.
- Vendor (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.

The above provisions must be attested to annually. VITL will seek this attestation from the vendor on an annual basis, including before the start of the contract. Proposals must include an attestation confirming they can agree to the above statements.

### Independent contractor

Please show that your company will be an independent contractor and not an employee as defined by the State of Vermont's Department of Labor. (The State's 'ABC' test for this is straightforward and the vendor should be able to quickly document that they meet the standards outlined here:

<https://labor.vermont.gov/document/who-employee-vs-independent-contractor.>)

### Additional Instructions and Information to Respondents

- All responses submitted shall be good for one hundred eighty (180) calendar days following the due date for the response.
- There is no obligation on VITL's part to award any work packages (tasks) to an awardee.
- VITL reserves the right to proceed with and award to the responder(s) that presents the best value to VITL as determined solely by VITL in its absolute discretion. Through the procurement process, VITL may make one or more awards for the requested services.
- VITL is not responsible for any cost incurred by the responder in either responding to this RFP or in participating in meetings with VITL prior to award.
- VITL reserves the right to conduct discussions with responders for the purpose of understanding the proposed solution and associated pricing.
- VITL reserves the right to reject any or all responses in part or in full.
- VITL will evaluate its requirements to determine which awardee possesses the requisite expertise and ability and represents to VITL the best value for each individual task.
- Should VITL proceed, VITL and the ultimate awardee will negotiate the work scope, schedule, and price for each task.

### Summary Conditions

THIS IS A REQUEST FOR PROPOSALS (RFP) ONLY. The information provided in the RFP is subject to change and is not binding on VITL. VITL has not made a commitment to procure any of the items released in this RFP and the RFP should not be construed as such a commitment or as authorization to incur costs for which reimbursement would be required or sought. All materials submitted become the property of VITL and be returned only at VITL's option. VITL reserves the right to reject any or all responses in part or in full and to waive any technicalities or informalities as may best serve the interests of VITL.

[Attachments](#)

Appendix 1: About VITL

Appendix 2: Contracting

2A: State Required Contract Attachments

2B: VITL Required Contracting Provisions

2C: Business Associate Agreement

Appendix 3: Required Capabilities Spreadsheet (separate Excel file)

Appendix 4: Required Pricing Spreadsheet (separate Excel file)

## Appendix 1 – About VITL

This section provides some information about the data VITL collects and stores.

### VITL PARTICIPANTS

	Contribute Data	Access Data
<b>Hospitals</b> (including all Vermont hospitals and two border hospitals, along with their inpatient and ambulatory services, emergency departments, and owned specialty and primary care practices)	15	16
<b>Vermont Federally Qualified Health Centers</b>	11	10
<b>Independent Specialty and Primary Care Practices</b>	49	91
<b>Home Health Agencies</b>	4	5
<b>Nursing Homes and Long-term Care Facilities</b>	0	4
<b>Pharmacy Chains and Independent Pharmacies</b>	11	1
<b>Laboratories (State and Commercial)</b>	15	0
<b>Departments of the State of Vermont</b>	2	3
<b>Designated Mental Health Agencies and Specialized Services Agencies</b>	0	12
<b>Emergency Medical Services Agencies</b>	0	50
<b>Commercial Payer</b>	0	1

A presentation is included in the RFP package that provides information about participation in and capabilities of the Vermont Health Information Exchange.

### VHIE DATA

Factor	Current
Approximate number of unique MPI IDs in the MPI (Our most robust records are for Vermonters, there is limited data available for the remainder of the individuals)	1.3M Vermonters 3.2M total individuals
Average numbers of result message transactions delivered to providers/month	120,000
Number of data sources contributing/accessing data	241
Message volume – the VHIE maintains data from messages received from 2019 through current estimated to be 15-20TB of data	385M messages
Clinical Data Repository	10TB
Reporting database	18TB
Average inbound message transactions/year	60,500,000

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- ADT	42,000,000
- CCD	3,900,000
- VXU	1,200,000
- ORU/ELR	13,400,000
Provider Portal Users	Current ~3,000 Anticipated ~6,000

VITL collects, matches, and standardizes patient data from health care organizations across the state, including hospitals, primary and specialty care providers, Federally Qualified Health Centers, home health providers, nursing homes, commercial labs, and others. The data received is parsed, deduplicated and stored in a FHIR clinical data repository.

The following table reflects the count of FHIR resources stored in the clinical data repository by resource type:

<b>FHIR Resource</b>	<b>Count of FHIR resources</b>
account	96,059,272
allergyintolerance	7,815,960
careplan	11,865,781
claim	4,032,591
clinicalimpression	19,793,641
communication	15,395,476
condition	108,767,133
consent	16,443
coverage	160,658,604
device	4,631,430
diagnosticorder	190,561,640
diagnosticreport	131,837,994
documentreference	35,347,555
encounter	136,581,389
immunization	21,077,583
location	2,567
medication	2,867,324
medicationadministration	2,883,148
medicationcheck	13,028
medicationprescription	52,194,432
medicationrequest	52,194,433
messageheader	395,823,522
observation	1,362,133,503
organization	8,677,614

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<b>FHIR Resource</b>	<b>Count of FHIR resources</b>
patient	9,878,218
practitioner	35,067,736
procedure	31,534,816
procedurerequest	190,561,649
referralrequest	42,689,486
relatedperson	56,465,827
specimen	37,990,864
substance	10,312
<b><i>TOTAL FHIR Resources</i></b>	<b><i>3,225,430,971</i></b>



## Appendix 2A – State Required Contract Attachments

The State of Vermont requires that VITL include all of the attachments contained in this section to contracts VITL enters with vendors. Any vendor of an HIE Solution is required to accept the terms of these attachments. All proposals must include an Attestation that the vendor agrees to these terms.

## ATTACHMENT C: STANDARD STATE PROVISIONS

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

REVISED OCTOBER 1, 2024

**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. Where an authorized individual is either required to click-through or otherwise accept, or made subject to, any electronic terms and conditions to use or access any product or service provided hereunder, such terms and conditions are not binding and shall have no force or effect. Further, any terms and conditions of Party’s invoice, acknowledgment, confirmation, or similar document, shall not apply, and any such terms and conditions on any such document are objected to without need of further notice or objection.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont without resort to conflict of laws principles. 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 regarding its performance under this 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:**

- A. 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.
- B. 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.
- C. The Party shall indemnify the State and its officers and employees if 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.
- D. Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

**8. Insurance:** During the term of this Agreement, Party, at its expense, shall maintain in full force and effect the insurance coverages set forth in the Vermont State Insurance Specification in effect at the time of incorporation of this Attachment C into this Agreement. The terms of the Vermont State Insurance Specification are hereby incorporated by reference into this Attachment C as if fully set forth herein. A copy of the Vermont State Insurance Specification is available at: [https://aoa.vermont.gov/Risk- Claims-COI](https://aoa.vermont.gov/Risk-Claims-COI).

**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 this Agreement, including but not limited to bills, invoices, progress reports, and other proofs of work.

**10. False Claims Act:** Any liability to the State under the Vermont False Claims Act (32 V.S.A. § 630 et seq.) 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. Use and Protection of State Information:**

- A. As between the State and Party, "State Data" includes all data received, obtained, or generated by the Party in connection with performance under this Agreement. Party acknowledges that certain State Data to which the Party may have access may contain information that is deemed confidential by the State, or which is otherwise confidential by law, rule, or practice, or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

- (“Confidential State Data”).
- B.** With respect to State Data, Party shall:
- i.** take reasonable precautions for its protection;
  - ii.** not rent, sell, publish, share, or otherwise appropriate it; and
  - iii.** upon termination of this Agreement for any reason, Party shall dispose of or retain State Data if and to the extent required by this Agreement, law, or regulation, or otherwise requested in writing by the State.
- C.** With respect to Confidential State Data, Party shall:
- i.** strictly maintain its confidentiality;
  - ii.** not collect, access, use, or disclose it except as necessary to provide services to the State under this Agreement;
  - iii.** provide at a minimum the same care to avoid disclosure or unauthorized use as it provides to protect its own similar confidential and proprietary information;
  - iv.** implement and maintain administrative, technical, and physical safeguards and controls to protect against any anticipated threats or hazards or unauthorized access or use;
  - v.** promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for Confidential State Data so that the State may seek an appropriate protective order; and
  - vi.** upon termination of this Agreement for any reason, and except as necessary to comply with subsection B.iii above in this section, return or destroy all Confidential State Data remaining in its possession or control.
- D.** If Party is provided or accesses, creates, collects, processes, receives, stores, or transmits Confidential State Data in any electronic form or media, Party shall utilize:
- i.** industry-standard firewall protection;
  - ii.** multi-factor authentication controls;
  - iii.** encryption of electronic Confidential State Data while in transit and at rest;
  - iv.** measures to ensure that the State Data shall not be altered without the prior written consent of the State;
  - v.** measures to protect against destruction, loss, or damage of State Data due to potential environmental hazards, such as fire and water damage;
  - vi.** training to implement the information security measures; and
  - vii.** monitoring of the security of any portions of the Party’s systems that are used in the provision of the services against intrusion.
- E.** No Confidential 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 the United States, except with the express written permission of the State.
- F.** Party shall notify the State within twenty-four hours after becoming aware of any unauthorized destruction, loss, alteration, disclosure of, or access to, any State Data.
- G.** State of Vermont Cybersecurity Standard Update: Party confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with State of Vermont Cybersecurity Standard Update in effect at the time of incorporation of this Attachment C into this Agreement. The State of Vermont Cybersecurity Standard Update prohibits the use of certain branded products in State information systems or any vendor system, and a copy is available at: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and->

[directives](#)

- H. In addition to the requirements of this Section 12, Party shall comply with any additional requirements regarding the protection of data that may be included in this Agreement or required by law or regulation.

**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 this 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, and shall include this provision in all subcontracts for work performed in Vermont. 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. Offset:** The State may offset any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any offset of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in 32 V.S.A. § 3113.

**16. Taxes Due to the State:** Party certifies under the pains and penalties of perjury that, as of the date this 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.

**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 this Agreement is signed, Party is not under an obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order. 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), as amended by Section 17 of Act No. 142 (2010) and by Section 6 of Act No. 50 (2011).

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 12 ("Confidentiality and Protection of State Information"); 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 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

**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. Regulation of Hydrofluorocarbons:** Party confirms that all products provided to or for the use of the State under this Agreement shall not contain hydrofluorocarbons, as prohibited under 10 V.S.A. § 586.

**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: <https://bgs.vermont.gov/purchasing-contracting/debarment>.

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

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

**25. 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 lockouts) ("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.

**26. Marketing:** Party shall not use the State's logo or otherwise 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.

**27. Termination:**

**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 this Agreement at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement 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 Agreement immediately, and the State shall have no obligation to pay Party 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. 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.

**28. 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.

**29. No Implied Waiver of Remedies:** Either 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.

**30. 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.

**31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements:** If this Agreement is a grant that is funded in whole or in part by Federal funds:

**A. Requirement to Have a Single Audit:** 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 Federal Audit Clearinghouse within nine months. If a single audit is not required, only the Subrecipient Annual Report is required. A Single Audit is required if the subrecipient expends \$1,000,000 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 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.

**32. Mandatory Disclosures:** In accordance with 2 CFR 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.

**33. Requirements Pertaining Only to State-Funded Grants:**

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,000, 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.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify; and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)



**ATTACHMENT D**  
**INFORMATION TECHNOLOGY SYSTEM IMPLEMENTATION**  
**TERMS AND CONDITIONS (rev. 01/12/2024, Modified)**

**1. NO SUBSEQUENT, UNILATERAL MODIFICATION OF TERMS BY CONTRACTOR**

Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor during the Term of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for the products and services being purchased by the State, as applicable, the components of which are licensed under the Contractor Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased by the State, as applicable, upon delivery, the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

**2. TERM OF CONTRACTOR'S DOCUMENTS; PAYMENT TERMS**

Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and shall have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract; provided, however, to the extent the State has purchased a perpetual license to use the Contractor's software, hardware or other services, such license shall remain in place unless expressly terminated in accordance with the terms of this Contract. Contractor acknowledges and agrees that, to the extent a Contractor Document provides for payment terms which differ from the payment terms set forth in Attachment B, such sections shall be waived and shall have no force and effect and the terms in Attachment B shall govern.

**3. OWNERSHIP AND LICENSE IN DELIVERABLES**

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

**3.2 State Intellectual Property.** Subject only to the limitation provided below, the State shall retain all right, title, and interest in and to State Intellectual Property, meaning (i)

all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, (ii) all information that is created under this Contract including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed or otherwise made available for the benefit of the State under this contract, and (iii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract.

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

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

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

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

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State’s

internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State's obligations with respect to Confidential Information, authorize others to do the same on the State's behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

Contractor shall reserve to the Department of Health and Human Services (HHS) a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use for Federal government purposes, in any software, modifications to software, and associated documentation that is designed, developed, or installed under this Contract except to the extent they include Proprietary Software, as defined in Federal regulation. 45 C.F.R. § 95.617.

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State.

- 3.4. Third Party Records in Custody of Contractor.** Neither State nor Contractor shall make any claim of rights, title, or ownership over third-party records submitted to or created by Contractor in the course of providing such third party with use of the system developed and maintained under this Contract or related services. Such records shall not be considered State Intellectual Property, Contractor Intellectual Property, Work Product, or Deliverables but may be included in or used to create Work Product or Deliverables to the extent that doing so would be consistent with the terms of service between Contractor and such third party. For the avoidance of doubt, furnishing any content, property, data, or information to the VHIE shall not establish, vest, or otherwise transfer any rights, ownership, or other claims to the VHIE by virtue of such a submission.

#### **4. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING**

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

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

opportunity to obtain business advantage over competitors who do not know it or use it.

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

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

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

## **5. SECURITY OF STATE INFORMATION**

**5.1 Security Standards.** To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) moderate baseline and *Federal Information Processing Standards Publication 200*

and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include, but not be limited to, encryption at rest and multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

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

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

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

Contractor's subcontractors, affiliates or agents which may be "data collectors" hereunder.

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

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

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

**5.3 Security Policies.** To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

**5.4 Operations Security.** To the extent the Contractor or its subcontractors, affiliates or agents process, transmit, and store State Data, the Contractor shall cause an SSAE 18 SOC 2 Type 2 audit report to be conducted annually. The audit results and the Contractor's plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor's receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Contractor's fiscal year, the Contractor shall transmit its annual audited financial statements to the State.

**5.5 Redundant Back-Up.** The Contractor shall maintain a fully redundant backup data center geographically separated from its main data center that maintains near real-time replication of State data from the main data center. The Contractor's back-up policies shall be made available to the State upon request. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

**5.6 Vulnerability Testing.** The Contractor shall run quarterly vulnerability assessments and promptly report results to the State. Contractor shall remediate all critical issues within 90 days, all medium issues within 120 days and low issues within 180 days.

Contractor shall obtain written State approval for any exceptions. Once remediation is complete, Contractor shall re-perform the test.

## **6. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

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

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

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

- (i) All Deliverables will be free from material errors and shall perform in accordance with the specifications therefor for a period of at least one year.
- (ii) Contractor will provide to the State commercially reasonable continuous and uninterrupted access to the Service, and will not interfere with the State's access to and use of the Service during the term of this Contract;
- (iii) The Service is compatible with and will operate successfully with any environment (including web browser and operating system) specified by the Contractor in its documentation;

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

**6.3 Limitation on Disclaimer.** The express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.

**6.4 Effect of Breach of Warranty.** If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall, at its own expense and without limiting any other rights or remedies of the State hereunder, re-perform or replace any services that the State has determined to be unsatisfactory in its reasonable discretion. Alternatively, with State consent, the Contractor may refund of all amounts paid by State for the nonconforming deliverable or service

## **7. TRADE SECRET, PATENT AND COPYRIGHT INFRINGEMENT**

The State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.

## **8. REMEDIES FOR DEFAULT; NO WAIVER OF REMEDIES**



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

No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

## **9. NO ASSUMPTION OF COSTS**

Any requirement that the State defend or indemnify Contractor or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of Contractor, is hereby deleted from the Contractor Documents.

## **10. TERMINATION**

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

In the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Materials to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Materials.

Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom State Materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting the State Materials, in a format usable without the use of the Services and as agreed to by State, at no additional cost.

Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

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

## **11.ACCESS TO STATE DATA:**

Except for State Materials which applicable law does not permit the State to access, the State may import or export State Materials in part or in whole at its sole discretion at any time (24 hours a day, seven (7) days a week, 365 days a year), during the term of this Contract or for up to [three (3) months] after the Term (so long as the State Materials remain in the Contractor's possession) without interference from the Contractor in a format usable without the Service and in an agreed-upon file format and medium at no additional cost to the State.

The Contractor must allow the State access to information such as system logs and latency statistics that affect its State Materials and or processes.

The Contractor's policies regarding the retrieval of data upon the termination of services have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

## **12.AUDIT RIGHTS**

Contractor will maintain and will update its agreements with permitted contractors upon renewal to cause its permitted contractors to maintain a complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. Contractor will provide to the State, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor personnel and to any and all Contractor facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Contractor and/or Contractor personnel and/or any or all of the records, data and information applicable to this Contract.

At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor (or such higher or more rigorous standards, if any, as State or Contractor applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Contractor's and/or its permitted contractors' operations and security procedures and controls; (iv) examine and verify Contractor's and/or its permitted contractors' disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Contractor's and/or its permitted contractors' performance of the Services including audits of: (1) practices and procedures; (2) systems, communications and information technology; (3) general controls and physical and data/information security practices and procedures; (4) quality initiatives and quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (6) Contractor's and/or its permitted

contractors' efficiency and costs in performing Services; (7) compliance with the terms of this Contract and applicable laws, and (9) any other matters reasonably requested by the State. Contractor shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software.

### **13. DESTRUCTION OF STATE DATA**

At any time during the term of this Contract within (i) thirty days of the State's written request or (ii) three (3) months of termination or expiration of this Contract for any reason, and in any event after the State has had an opportunity to export and recover the State Materials, Contractor shall at its own expense, and shall require its permitted contractors upon renewal of their respective agreements, to securely destroy and erase from all systems it directly or indirectly uses or controls all tangible or intangible forms of the State Materials, in whole or in part, and all copies thereof except such records as are required by law. The destruction of State Data and State Intellectual Property shall be performed according to National Institute of Standards and Technology (NIST) approved methods. Contractor shall certify in writing to the State that such State Data has been disposed of securely. To the extent that any applicable law prevents Contractor from destroying or erasing State Materials as set forth herein, Contractor shall retain, in its then current state, all such State Materials then within its right of control or possession in accordance with the confidentiality, security and other requirements of this Contract, and perform its obligations under this section as soon as such law no longer prevents it from doing so.

Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.

### **14. CONTRACTOR BANKRUPTCY.**

Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Intellectual Property.

### **15. SOV Cybersecurity Standard Update 2023-01:** Contractor confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with *State of Vermont Cybersecurity Standard 2023-01*, which prohibits the use of certain branded products in State information systems or any vendor system that is supporting State information systems, and is available on-line at:

<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

**16. With respect to the insurance required in Attachment C to this Contract, in the Insurance Specification dated November 1, 2023, before commencing work on this Contract and throughout the term of this Contract, Contractor, and the subcontractor who operates the Clinical Data Repository, agrees to procure and maintain:**

Umbrella Liability coverage for services performed under this contract, with minimum coverage of \$2,000,000 per claim, \$2,000,000 aggregate.

The Technology Professional liability coverage for services performed under this contract required by paragraph 9 of the State Insurance Specification shall have minimum coverage of \$2,000,000 per claim, \$2,000,000 aggregate.

The Cyber Liability coverage for services performed under this contract required by paragraph 10 of the State Insurance Specification shall have minimum coverage of \$5,000,000 per claim, \$5,000,000 aggregate.

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

**17. LIMITATION OF LIABILITY.**

CONTRACTOR'S LIABILITY FOR DAMAGES TO THE STATE ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT SHALL NOT EXCEED TWO TIMES THE MAXIMUM AMOUNT PAYABLE UNDER THIS CONTRACT. LIMITS OF LIABILITY FOR STATE CLAIMS SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD, OR INTENTIONAL MISCONDUCT; OR (E) VIOLATIONS OF THE STATE OF VERMONT FRAUDULENT CLAIMS ACT. IN NO EVENT SHALL THIS LIMIT OF LIABILITY BE CONSTRUED TO LIMIT CONTRACTOR'S LIABILITY FOR THIRD PARTY CLAIMS AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR'S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT. NOTWITHSTANDING THE FOREGOING, THE CONTRACTOR'S LIABILITY FOR CLAIMS ARISING OUT OF ITS CONFIDENTIALITY OBLIGATIONS TO THE STATE IS LIMITED TO \$5,000,000 AGGREGATE.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOST PROFITS, INCOME, GOODWILL, OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement.

#### **18. SOFTWARE LICENSEE COMPLIANCE REPORT.**

In lieu of any requirement that may be in a Contractor Document that the State provide the Contractor with access to its System for the purpose of determining State compliance with the terms of the Contractor Document, upon request and not more frequently than annually, the State will provide Contractor with a certified report concerning the State's use of any software licensed for State use pursuant this Contract. The parties agree that any non-compliance indicated by the report shall not constitute infringement of the licensor's intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance.

#### **19. Attachment F, Section 9 (Information Technology System), subsection Security and Data Transfers is hereby deleted and replaced as follows:**

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

Party will ensure sufficient controls are implemented to address risks related to the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. Party will make reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, Party shall securely delete data (including archival backups) from Party's equipment that contains State Data, in accordance with standards adopted by the Agency of Human Services. Party, in the event of a data breach, shall comply with the terms of Section 7 above.

ATTACHMENT E

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## ATTACHMENT F

### AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT/GRANT PROVISIONS

1. **Definitions:** For purposes of this Attachment F, the term "Agreement" shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term "Party" when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term "Party" shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term "Party" as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term "Party" shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.
2. **Agency of Human Services:** The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.
3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver*):

**Inspection and Retention of Records:** In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through

inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

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

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

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

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



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

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

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

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

5. **Non-Discrimination:**

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

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

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

6. **Employees and Independent Contractors:**

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

7. **Data Protection and Privacy:**

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

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

**Protection of Personal Information:** Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be

used to distinguish or trace an individual's identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other personal or identifiable information that is linked or linkable to a specific person, such as date and place of birth, mother's maiden name, etc.

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

**Data Breaches:** The notice required under the Use and Protection of State Information terms of Attachment C shall be provided to the Agency of Digital Services Chief Information Security Officer. <https://digitalservices.vermont.gov/about-us/contacts>. Party shall in addition comply with any other data breach notification requirements required under federal or state law or Attachment E.

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

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

**Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the

Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. **Information Technology Systems:**

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

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

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

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

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

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

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

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. Party will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, Party shall securely delete data (including archival backups) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

Party, in the event of a data breach, shall comply with the terms of Section 7 above.

10. **Other Provisions:**

**Environmental Tobacco Smoke.** Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict

the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

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

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

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

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

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

*AHS ATT. F 6/19/2024*

**ATTACHMENT G**  
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## **ATTACHMENT H**

### **STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction)**

(Revision date: *December 30, 2024*)

#### **PROCUREMENT OF RECOVERED MATERIALS**

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated Items unless the products cannot be acquired-

1. Competitively within a time frame providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price

Information about this requirement, along with the list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guidelines web site,

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of section 6002 of the Solid Waste Disposal Act.

#### **CLEAN AIR ACT**

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### **FEDERAL WATER POLLUTION CONTROL ACT**

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. **a.**

Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

## **CONTRACTOR BREACH, ERRORS AND OMISSIONS**

1. Any breach of the terms of this contract, or material errors and omissions in the work product of the contractor must be corrected by the contractor at no cost to the State, and a contractor may be liable for the State's costs and other damages resulting from errors or deficiencies in its performance.
2. Neither the States' review, approval or acceptance of nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.
3. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law or elsewhere in the contract.

## **TERMINATION FOR CONVENIENCE**

1. General
  - a. Any termination for convenience shall be effected by delivery to the Contractor an Order of Termination specifying the termination is for the convenience of the Agency, the extent to which performance of work under the Contract is terminated, and the effective date of the termination.
  - b. In the event such termination occurs, without fault and for reasons beyond the control of the Contractor, all completed or partially completed items of work as of the date of termination will be paid for in accordance with the contract payment terms.
  - c. No compensation will be allowed for items eliminated from the Contract.
  - d. Termination of the Contract, or portion thereof, shall not relieve the Contractor of its contractual responsibilities for work completed and shall not relieve the Contractor's Surety of its obligation for and concerning any just claim arising out of the work performed.
2. Contractor Obligations

After receipt of the Notice of Termination and except as otherwise directed by the State, the Contractor shall immediately proceed to:

  - a. To the extent specified in the Notice of Termination, stop work under the Contract on the date specified.
  - b. Place no further orders or subcontracts for materials, services, and/or facilities except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
  - c. Terminate and cancel any orders or subcontracts for related to the services, except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.

- d. Transfer to the State all completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the State.
  - e. Take other action as may be necessary or as directed by the State for the protection and preservation of the property related to the contract which is in the possession of the contractor and in which the State has or may acquire any interest.
  - f. Make available to the State all cost and other records relevant to a determination of an equitable settlement.
3. Claim by Contractor  
After receipt of the Notice of Termination from the state, the Contractor shall submit any claim for additional costs not covered herein or elsewhere in the Contract within 60 days of the effective termination date, and not thereafter. Should the Contractor fail to submit a claim within the 60-day period, the State may, at its sole discretion, based on information available to it, determine what, if any, compensation is due the Contractor and pay the Contractor the determined amount.
4. Negotiation  
Negotiation to settle a timely claim shall be for the sole purpose of reaching a settlement equitable to both the Contractor and the State. To the extent settlement is properly based on Contractor costs, settlement shall be based on actual costs incurred by the Contractor, as reflected by the contract rates. Consequential damages, loss of overhead, loss of overhead contribution of any kind, and/or loss of anticipated profits on work not performed shall not be included in the Contractor's claim and will not be considered, allowed, or included as part of any settlement.

**PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO**

**SURVEILLANCE SERVICES OR EQUIPMENT-** this clause must be included in all subcontracts.

In connection with this contract, Contractors and Subcontractors are prohibited from:

- (a) Utilizing, procuring or obtaining equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
  - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (b) In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- (c) See [Public Law 115-232](#), section 889 for additional information.
- (d) See also [§ 200.471](#).

**SUSPENSION AND DEBARMENT** - This clause must be included in all subcontracts

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). The contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by (insert name of the recipient/subrecipient/applicant). If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to (insert name of recipient/subrecipient/applicant), the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions

**BYRD ANTI-LOBBYING CERTIFICATION** - The following provision is applicable to the Contractor for contracts over \$100,000.00, and Contractor shall include this clause in all its subcontracts over \$100,000.00.

Contractor has provided the certification required by the Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended, and will follow the requirements for certification of each lower tier (subcontract) to disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures will be forwarded from tier to tier up to the Contractor who in turn will forward the certification(s) to the federal awarding agency.

### **DOMESTIC PREFERENCE FOR PROCUREMENTS**

As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”

### **CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS FIRMS.**

- (a) Contractor entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
  - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in [paragraphs \(b\)\(1\) through \(5\)](#) of this section

### **SUBCONTRACTS**

Contractor shall include all above provisions of the “State of Vermont - Federal Terms Supplement (Non-Construction)” Attachment in all subcontracts for work performed related to this contract.

## Appendix 2B – VITL Required Contract Provisions

The following VITL contract provisions must be included in the final contract VITL will sign with the successful vendor. All proposals must include an Attestation that the vendor agrees to these terms.

### 1. Termination

- a. Termination for Cause. 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, either party may terminate this Agreement if the other party becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed or a petition of bankruptcy is filed with respect to the party and is not dismissed within thirty (30) days. VITL may immediately terminate this Agreement, with notice to Contractor, to the extent (A) Contractor violates any applicable federal, state, or local law, rule, or regulation (collectively, “Applicable Laws”) and/or acts or fails to act in a manner which causes VITL to be in violation of Applicable Laws or (B) Contractor breaches any material term or condition of this Agreement three (3) or more times in any given twelve (12) month period, regardless of whether said breaches have been timely cured by the Contractor said breaches have been timely cured by the Contractor.
- b. Termination for Convenience. Either party may terminate this Contract, without cause, at any time upon thirty (30) days prior written notice.
- c. Termination for Changes to State of Vermont Funding: VITL receives funding through its contract with the State of Vermont (“State”) on an annual basis. VITL may terminate this Contract, or any portion thereof, upon thirty (30) days prior written notice to Contractor if, in VITL’s sole determination, the State fails to provide sufficient funding for Contractor’s fees. Contractor shall be compensated for services performed and costs incurred prior to the date of termination.

### 2. Confidential Information and Public Records Law.

- a. Confidentiality. The Contractor agrees that any information received by the Contractor during any furtherance of the Contractor's obligations in accordance with this contract, which concerns the personal, financial or other affairs of VITL will be treated by the Contractor in full confidence and will not be revealed to any other persons, firms or organizations. Any and all such confidential information shall be accessed, maintained, and used in accordance with and in furtherance of the services described in any SOW. Upon the prior review and written consent of VITL, Contractor may publish articles or make presentations regarding Contractor’s work for VITL. Contractor and VITL agree to keep the terms of this contract confidential between the parties; provided, however that VITL may disclose both the existence of and the contents of this Contract to any of

- its auditors and to the State of Vermont and any of its Departments, Agencies or Offices and any third party that any of the foregoing instruct VITL to so provide.
- b. Public Records Law. VITL, as the result of a Vermont Superior Court decision, has been held to be the “equivalent” of a “public agency” for the purpose of document requests made under the Access to Public Records Law, 1 V.S.A. §§ 315-320. As such, any records in its possession must be disclosed to the public upon request unless the document is exempt from the disclosure requirement. Such exemptions include, but are not limited to, protections for “trade secrets . . . which gives its user or owner an opportunity to obtain business advantage over competitors” and records related to the “negotiation of contracts.” 1 V.S.A. § 317(c). All records that Contractor considers to be trade secrets, as that term is defined by 1 V.S.A. § 317(c)(9), or that Contractor otherwise seeks to have VITL consider as exempt must be identified clearly and specifically at the time of submission. It is not sufficient to merely state generally that a proposal is proprietary, contains a trade secret, or is otherwise exempt. Particular records, pages, and sections which are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from disclosure.
  - c. Written Communications. Contractor agrees that it shall not use any method of written communication or provide any written information to VITL that does not allow VITL to retain sufficient records of the communication or information to comply with the requirements of the Vermont Access to Public Records Law that may be imposed on VITL; unless, in the alternative, Contractor expressly agrees that it shall: a) retain the required communication or information, b) make it available to VITL upon request, and c) take all necessary measures to assist and allow VITL to comply with any requirements imposed by the Access to Public Records Law related to such communication or information.
3. Non-Competition. During the term of the agreement and for one year after its termination, Contractor agrees to not solicit nor accept consulting business, except from VITL, which involves the development of a business enterprise that would directly compete with VITL's statewide health information exchange services to include clinical messaging and data exchange among Vermont health care providers, payers or other sources or users of health information in Vermont. Each of VITL and Contractor agree, during the term of the agreement and for one year after its termination, not to hire any individuals who are, or were, during the term of this agreement or one year after its termination, employees of the other without the written consent of the other.
  4. Compliance With Export Laws. The Parties shall not transfer, either directly or indirectly, the Application IP or any other Proprietary Items, either in whole or in part, to any destination subject to export restrictions under U.S. law, unless prior written authorization is obtained from the appropriate U.S. agency; and shall otherwise comply with all other applicable import and export laws, rules and regulations.
  5. Termination for Failure to Pass Security Assessment. The Parties agree to work closely with each other in assessing the security of Contractor's system operations, which may include completing

security questionnaires and similar security inquiries and certifying the privacy and security aspects of their system operations (the "Assessment"). The Parties acknowledge that access to or use of VITL's system may be delayed or withheld until completion of the Assessment and determination that Contractor's system meets the requirements of this MSA. If VITL determines that modifications or remedial action to Contractor's system are necessary to meet the requirements of this MSA, such modifications shall be made within sixty (60) days of notice. If Contractor is unwilling or unable to make the requested modifications or remedial actions, the MSA and any SOWs may be terminated immediately in accordance with the terms and conditions of the MSA.

6. EXCEPT AS OTHERWISE PROVIDED BELOW IN THIS SECTION 7(D), IN NO EVENT SHALL EITHER PARTY'S LIABILITY UNDER THIS MSA FOR ANY CLAIM OF ANY TYPE WHATSOEVER ARISING HEREUNDER THAT IS NOT SUBJECT TO A LIMITATION OR EXCLUSION EITHER CONTAINED HEREIN OR ARISING UNDER APPLICABLE LAW (COLLECTIVELY, THE "CLAIM"), EXCEED THREE (3) TIMES THE AMOUNT OF THE ANNUAL FEES TO BE PAID BY VITL TO CONTRACTOR DURING THE THEN CURRENT MSA YEAR.

The limitations set forth in this Section 7(d) shall not apply to:

- i. Violations of HIPAA (including claims under the attached or related Business Associate agreement) or a breach of confidentiality provisions;
  - ii. Contractor's indemnification obligations under Section 6;
  - iii. Arising out of or relating to Contractor's breach of any Warranty;
  - iv. Losses arising out of or relating to Contractor's unauthorized suspension, termination, or disabling of the services in breach of this MSA;
  - v. Losses to the extent covered or required to be covered by a Party's insurance; and
  - vi. Losses arising from or relating to Contractor's or Contractor's subcontractor's violation of law.
7. Location of VITL Data: No confidential VITL 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 the continental United States, except with the express written permission of the VITL.



## Appendix 2C – Business Associate Agreement

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between Vermont Information Technology Leaders, Inc. located at 600 Blair Park Rd., Suite 302, Williston VT 05495, (“Covered Entity”) and VENDOR located At ADDRESS (“Business Associate”) as of DATE (“Effective Date”). This Agreement supplements and is made a part of the Multi Services Agreement between Covered Entity and Business Associate dated April 16, 2024.

Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

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

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

“Qualified Service Organization” or “QSO” shall have the same meaning as set forth in 42 CFR § 2.11.

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

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

“Subcontractor” means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the

Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

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

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

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

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 18 or, (b) as otherwise permitted by Section 3.

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

**4. Business Activities.** Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the Agreement requires the person or entity to notify Business Associate, within two (2) business

days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

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

**6. Documenting and Reporting Breaches.**

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

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

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its

risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

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

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

8. **Providing Notice of Breaches.**

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

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either

1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

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

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

8.5 Business Associate shall notify individuals of Breaches as specified in 45 CFR § 164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business Associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

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

**10. Access to PHI.** Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR § 164.524. Business Associate shall provide such access in the

time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

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

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

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

14. **Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 19.8.

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

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

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

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

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

17. **Training.** Business Associate understands that it is its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement.

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

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

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

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

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



**19. Qualified Service Organization Provisions.**

19.1 This Section shall only apply in the event that Covered Entity gains access to any PHI from a Health Care Organization that is subject to 42 CFR Part 2 (“Part 2 Program Information”). In such event, Covered Entity may be a Qualified Service Organization or QSO of a Health Care Organization for the purpose of providing services which include PHI containing Part 2 Program Information.

19.2 In the event that Covered Entity requests Business Associate to provide Services regarding Part 2 Program Information, Business Associate agrees to the following limits on the use and disclosure of the Part 2 Program Information:

- a. Business Associate shall only access Part 2 Program Information to the extent needed by it to provide the services described in this Agreement or the underlying agreement.
- b. Business Associate agrees not to use or further disclose any Part 2 Program Information other than as specified in this Agreement or the underlying Agreement.
- c. Business Associate acknowledges that in receiving, storing, processing, or otherwise using any Part 2 Program Information, it is fully bound by the provisions of the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.
- d. Business Associate shall undertake to resist in judicial proceedings any effort to obtain access to Part 2 Program Information other than as expressly provided for in 42 CFR Part 2, and Business Associate shall notify Covered Entity in such case.

**20. Miscellaneous.**

20.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the underlying agreement, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the underlying agreement continue in effect.

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

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

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

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

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

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

20.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

By: \_\_\_\_\_

VITL

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

**Contractor:**

Name

By: \_\_\_\_\_

Name:

Title:

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

Rev: 2/12/2021