

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and OptumInsight, Inc., with a principal place of business at 13625 Technology Drive, Eden Prairie, Minnesota, 55344 (hereafter called "Contractor"). The Contractor's form of business organization is a corporation. The Contractor's local address is 701 Pennsylvania Ave, NW, Washington, DC. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is personal services for Evaluation and Remediation & Operations Support for the Vermont Health Connect (hereafter called "Contract" or "Agreement"). Detailed services to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$5,690,242.
4. **Contract Term.** The period of Contractor's performance shall begin on June 9, 2014 and end on December 31, 2014.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this Contract nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office is required.

Approval by the DII Chief Information Officer is required.

Approval by the Secretary of Administration is required.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This Contract may be cancelled in three ways. A non-cause termination may occur with thirty (30) days' written notice to either party. A cause termination may occur with thirty (30) days' written notice to either party, provided that the reason for cause remains uncured at the end of thirty (30) days after receipt of such notice. Third, if a governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this Contract are provided, is not in compliance with State and Federal law or is operating with deficiencies, the State may terminate this contract immediately and notify the Contractor accordingly.
8. **Attachments.** This Contract consists of 40 pages including the following attachments, which are incorporated herein:
 - Attachment A - Specifications of Work to be Performed
 - Attachment B - Payment Provisions
 - Attachment C - Customary State Contract provisions
 - Attachment D – Modifications of Requirements in Attachment C & F
 - Attachment E - Business Associate Agreement
 - Attachment F - Customary Contract Provisions of the Agency of Human Services

The order of precedence of documents shall be as follows:

- 1). This document
- 2). Attachment D
- 3). Attachment C
- 4). Attachment A
- 5). Attachment B
- 6). Attachment E
- 7). Attachment F
- 8). Other Attachments (if any)

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

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

MARK LARSON, COMMISSIONER DATE
312 Hurricane Lane, Suite 201
Williston, VT 05495-2087
Phone: 802-879-5901
Email: Mark.Larson@state.vt.us

PAUL EMERSON, VP FINANCE Date
13625 Technology Drive
Eden Prairie, MN 55344
Phone: 952-917-7002
Email: paul.emerson@optum.com

ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

I. PURPOSE

The Vermont Agency of Health and Human Services' Health and Human Services Enterprise (HSE) is Vermont's next generation of coordinated, integrated and more cost-effective health and human services. Connecting information and promoting collaboration in a service-oriented, person-centric environment will result in improved access to health care and delivery of human services programs available from the State. This in turn will yield better and more cost-effective outcomes for Vermonters. These evolving capabilities will be used to enable the State's emerging strategy for a reformed health care delivery system.

On December 13, 2012 the state entered into a contract with CGI Technologies and Solutions, Inc. (CGI), to perform software integration and hosting services for the creation of the State of Vermont health insurance marketplace known as Vermont Health Connect (VHC), as required under the Affordable Care Act (ACA). While VHC was rolled out October 1, 2013 as required by law, many individuals experienced challenges signing up or making changes to their coverage, in large part due to limitations in the functionality of the VHC information technology (IT) platform. Most significantly, the VHC system does not currently include "change of circumstance" (COC) functionality; in other words, there is no ability to modify an application for any reason (e.g. change of address, newborn, death, plan selection) in the system once it has been submitted.

In addition, functionality to allow employers and their employees to enroll in VHC plans was not deployed successfully; as a result, VHC has directed those individuals to enroll directly in VHC plans through the VHC insurance carriers.

The VHC's system limitations have created operational challenges and data integrity issues. The lack of COC functionality in particular is straining all areas of the operation, from application intake through premium processing. An interim change process (ICP) is in place that requires applications to be withdrawn and re-entered, resulting in duplicate records and data integrity issues. The complexity of this manual process, which involves staff from the State and CGI, is very time consuming and will require significant resources to clear backlogs in sufficient time to prepare for the next open enrollment period to begin October 1, 2014. Backlogs continue to grow in size.

The scope of services includes four (4) potential work streams (the "Services"), as follows:

- Stream 1 – IT Analysis and Revised Plan
- Stream 2 – Operations Analysis and Revised Plan
- Stream 3 – Supplemental Operations Support
- Stream 4 – IT Project Management and Delivery

Contractor will perform these Services as described in greater detail in Section II of this Attachment A.

All reports, plans and deliverables under this contract, unless otherwise specifically indicated in a Task Order, shall be submitted to the State's Authorized Representatives as set forth in Attachment B to this Contract.

II. SPECIFICATION OF WORK

Stream 1. IT Analysis and Revised Plan

The Contractor shall conduct a risk assessment and gap analysis of the existing VHC Solution implemented

by CGI to support the HSE, with an emphasis on the VHC application.

The Contractor shall:

1. Use the prior VHC assessments performed by the State and the Contractor's experience with the state-based marketplaces in other states, such as Hawaii, Maryland and Massachusetts, to expedite the evaluation process and minimize the cost of the services to the State. The Contractor shall collect relevant permissible information from other states pursuing state-based marketplaces to build upon additional lessons learned. The Contractor will also utilize its knowledge and experience from work performed for the federal government on its HealthCare.gov general contracting role.
2. Analyze the existing VHC solution. This analysis shall include:
 - Code review: The Contractor, in consultation with the State, shall identify the key components of the VHC Solution that present the greatest vulnerabilities, to determine assets requiring a code review (e.g., database queries), whether code in development or code in production. Focus will be placed on code structure and the use of industry standard coding practices which would ensure integrity and optimal performance. By the end of the third day of the assessment, the Contractor and the State will agree to the scope of the VHC code review.
 - The Contractor will create context diagrams that identify which system components are involved in specified transactions based on a model of transaction mapping the Contractor has already completed for other State Exchanges. The context diagrams will trace the transaction flow through each logical component. The Stream 1 deliverable will identify opportunities for performance tuning and application efficiency.
 - Review of system architecture, with a focus on the VHC application's adherence to the State's Service Oriented Architecture (SOA) guidelines, which shall be made available to the Contractor under separate cover. Review of System Architecture shall include:
 - Review of Enterprise Architecture reports and assessments conducted on individual solution components, integration of these components, and their implementation statuses as compared to expectations set forth in the scope of the CGI contract and artifacts (including non-functional requirements) related to individual solution components and current integration and implementation statuses; SOA, Oracle Identity and Access Management (IAM), Master Data Management (MDM), Siebel, Oracle Policy Automation (OPA), Webcenter Content/Capture, OneGate, LifeRay, and other software solutions incorporated into the VHC.
 - Review of architecture and implementation of interfaces to external systems, including but not limited to, federal, other State of Vermont, Insurance Carriers and Benaissance (premium processing) interfaces.
 - Review of all Security and Privacy related assessments, documents, artifacts and the current Plan of Action and Milestones (POAM) remediation status.
 - By the end of the third day of the assessment, the Contractor, in consultation with of the State will develop a scope of the architecture review for State approval.
 - Review of testing methodologies used by CGI of the VHC application and related results, including; but not limited to, unit testing, functional testing, and regression testing any scope that falls within joint systems integration testing (SIT) and user acceptance testing (UAT) and testing of insurance carrier and other interfaces. The Contractor will prioritize UAT related to the upcoming Change of Circumstance release in the testing review. Methodologies shall include:
 - Review of test scenario coverage for business functionality of the VHC and provision of recommendations to improve test coverage for functional testing and regression testing.
 - Evaluation of test execution methods (versus manual execution). Confirmation that the test process validates all aspects of the purpose of a given test scenario or script.
 - An assessment on testing resources and business analysts involved in testing to ensure the proper

- business acumen is being applied to the testing effort.
- Program management assessment including the current state of the overall program management structure and processes, relative to industry best practices, in use by the State and CGI for the VHC implementation.
3. The Contractor shall also conduct a VHC Maintenance and Operations (M&O) Assessment of the State's HSE platform and the VHC solution consisting of the following:
- Review of CGI's M&O Plan and capabilities with respect to supporting the current VHC deployment as well as future use of the platform by additional HSE programs (IE, MMIS, etc.). This review shall include the following topics and result in a set of actionable recommendations with potential solution options to drive improvements to deficient areas:
 - Evaluation of the ability of the VHC IT Platform to support multiple System Integrator vendors working in parallel development streams.
 - Evaluation of current vendor implementation of Information Technology Infrastructure Library (ITIL)-based operational processes including; but not limited to, change, release, configuration, incident, and escalation management.
 - Evaluation of CGI organizational structure and staffing levels, CGI's capability to develop steady state M&O activities, and CGI roles and responsibilities to ensure operation of the VHC in accordance with state contract requirements and service levels.

Required Deliverable/Payment Milestone: Based on the assessments described above, the Contractor shall provide the State with a written plan that outlines concrete, actionable recommendations for improvements, including prioritization suggestions and FTE and level of effort (LOE) estimates for remediation of VHC Solution and program deficiencies. The plan will be composed of the following six elements:

1. Code review - written report of the VHC application components and code reviewed, results, and recommended improvements/actions.
2. Transaction monitoring - context diagram(s) covering in-scope business transactions (twelve (12)) transactions are assumed in this scope of work). The context diagrams will trace the transaction flow through each logical component. The report will identify opportunities for performance tuning and VHC application efficiency.
3. Architectural review – written report that details the architectural review, findings, and recommended course of action. This will include a documented end-to-end VHC application architecture diagram. The report will address items noted in the architecture review described in Stream 1 above.
4. Quality assurance review – a summary of gaps identified within the quality assurance (QA) life cycle and recommendations for improvements to processes, tools, and/or staffing.
5. Review of CGI's plan and capabilities for on-going Maintenance and Operations - a report documenting process gaps with a focus on improving stability and readiness for Open Enrollment. The report will include:
 - A recommendation for closing gaps, improving VHC stability and availability and the activities necessary to prepare for Open Enrollment.
 - A functional organization chart of all system capabilities including the level of M&O staffing that is needed to support those capabilities.
 - A documented readiness process for the 2015 open enrollment period.
 - A recommendation on how to improve disaster recovery and the Business Continuity Plan.
 - An assessment of the status of documentation of system artifacts, including a list of documents which are (i) missing or (ii) in need of updates and an annotation of required changes.
6. Program management review – a report determining CGI's ability to deliver and identify areas at high risk for schedule noncompliance.

The Contractor's plan shall support a design to lower the current backlog of all service requests while

keeping the VHC operational, as well as a production support approach.

The final version of this Deliverable shall be delivered to the State no later than July 3, 2014.

Stream 2. Operations Analysis and Revised Plan

The Contractor shall work with current VHC contractors, including; but not limited to, CGI, Exeter, Benaissance, and Maximus, to conduct a risk assessment of current State operations with respect to the VHC. This assessment shall:

1. Provide a report of existing analysis and experience conducted by the State and State contractors that identifies existing backlogs and areas of risk including; but not limited to, Change of Circumstance work-arounds, support of the monthly dunning process, initial enrollment processing, initial and ongoing invoicing and billing reconciliation and necessary control points.
2. Confirm size, scope and prioritization of service request backlog and provide a remediation plan and LOE required to remediate identified gaps.
3. Review interim manual business procedures being used to mitigate missing automated functionality and recommend new processes or process improvements to address operational risks and inefficiencies.
4. Assess current state of the OneGate portal and Siebel user interface functionality, efficiency, and ease of use to support ongoing operation (including upcoming open enrollment) and provide a remediation plan and LOE required to remediate identified gaps. This assessment shall consist of a review of the independent portal usability assessment underway by the State.

The Contractor shall conduct interviews with VHC Operations leaders, Subject Matter Experts, other relevant State agencies and vendors identified by the State. During the assessment, Contractor will obtain information regarding, but not limited to:

- Background of VHC and interaction with CGI along with CGI's subcontractors
- Review of Release and Change Control processes
- Servicing impacts due to system functionality, specifically, details of gaps and or limitations that have required additional resources or processes to remediate
- Reports, escalation processes, and daily operational experience relevant to VHC's application backlog
- Application processes that fail and result in a service request
- Inventory tracking and process maps to ensure all backlog volumes are accounted for
- Current escalation process by channel (legislative, executive, etc.) and overview of current tracking system
- Functionality of the following work streams along with established workarounds created due to deficient system functionality:
 - Enrollment & Eligibility
 - Plan Management
 - 820 & 834 Management
 - SHOP
 - Premium Processing

Deliverable: The Contractor shall supply the State with a comprehensive Stabilization Plan that includes findings from the interviews, data research and observations collected during Stream 2 assessment. In addition, for every area, where the Contractor has identified an opportunity, a detailed remediation plan with Key Deliverable, Key Tasks, Assigned Responsibilities (Optum, VHC) and Impacts (Enrollment, Efficiency Gained, etc.) will be provided.

The Stabilization Plan shall be delivered to the State no later than June 27, 2014.

Stream 3. Supplemental Operations Support

The Contractor shall provide operational support to reduce the backlogs caused by system deficiencies to normalized levels. This reduction shall be accomplished no later than August 30, 2014. The Contractor, in consultation with the State, shall develop a work plan to define the services and staffing levels needed to accomplish backlog reduction as required by this Contract. The work plan shall identify priorities and scheduling.

After the work plan is accomplished in the paragraph above but before any work on Stream 3 may begin, the State shall approve a Task Order submitted by the Contractor in the form set forth in Exhibit 1 to this Attachment A, in accordance with the process as further described in Attachment B. Task Orders are to be approved and signed by the State's Authorized Representative, the DVHA Business Office and the Contractor prior to work commencement. Stream 3 Task Orders as signed by the parties are hereby incorporated by reference into this Contract. The Contractor shall organize and deliver Operational Support Services in the following areas as defined in the applicable Task Order:

1. Backlog Reduction: The Contractor shall perform the services listed below to develop an appropriate plan to eliminate identified backlogs:
 - Change of Circumstance
 - Determine training, systems requirements and transaction cycle time from VHC Operations team
 - Plan supporting how hours will be used to work the backlog prior to automation
 - Coordinate with the State and VHC Contractors for systems access by the Contractor
 - Conduct training sessions related to backlog (product, process and systems)
 - Deploy appropriate resources to achieve completion date of August 30th for complete reduction of backlog
 - Other backlogs, as they are identified within the assessment performed in Stream 2, will be scoped and modeled out using Change of Circumstance backlog reduction approach.
2. Escalations: the Contractor shall perform the following services to remediate or augment the current escalation capability within VHC:
 - Create Escalation procedure manual that documents escalation process and remediation steps
 - Provide adequate staffing to manage the workload
 - Create Enterprise Escalation Workflow Tool
 - Conduct feasibility assessment
 - Facilitate requirements gathering with VHC team and appropriate escalation tool users
 - Build out and deploy enterprise tool

Contractor shall deliver the Escalation procedure manual and Workflow tool to the State.

3. Business Process and Support: the Contractor shall provide the following services to document existing issues and build redundant capacity to support critical activities:
 - In consultation with the VHC team (current contracted and state staff), Contractor shall document appropriate workaround instructions identified during assessment. Provide document with current workarounds (after edits, deletions and adds) as well as sufficient training to allow Customer Support Center and State teams to perform workarounds;
 - Create Operational Manual by monitoring daily work and interviewing each subject matter expert (SME). Subsequently, the Contractor shall document each SME's responsibilities. Contractor shall test the Manual by having a Business Analyst (BA) perform the work

- function. The SME can validate and approve the work instructions.
 - Provide adequate staffing to manage the workload for identified areas of opportunity (i.e., eligibility and enrollment, plan management, 834, and SHOP SMEs).
 - The Contractor shall facilitate training to be performed by State staff on the Operational Manual, as approved by the State.
4. Renewal/2015 Open Enrollment Readiness: the Contractor shall perform the services listed below to develop an appropriate plan to support VHC readiness for annual renewals and 2015 Open Enrollment:
- Make recommendations for handling consumers seeking to renew insurance through VHC; Coordinate Open Enrollment strategy and facilitate readiness plan to ensure VHC team, including the Customer Support Center, has well defined, documented processes and adequate staff to support anticipated volume.
 - Provide Marketing support, if deemed necessary and approved via a Task Order
5. Call Center Operations: the Contractor shall perform the services listed below to assist the Customer Support Center:
- Consult with Customer Support Center on end-of-year forecast for accuracy and staffing approach
 - Provide efficiency plan for improved consumer experience, including Interactive Voice Response (IVR), Customer Response Management (CRM) and other identified opportunities
 - Build out training curriculum with updated processes and any workarounds

The Contractor shall provide operational support to reduce the Change of Circumstance backlogs caused by system deficiencies to regular ongoing application volume no later than August 31, 2014.

Stream 4. IT Project Management and Delivery

In accordance with Section III of this Attachment A, as set forth below, the Contractor shall provide a dedicated Program Manager and project management team to support the State in implementing the approved technology assessment recommendations and in providing ongoing oversight of and discipline to the VHC program.

Before any work on Stream 4 may begin, the State shall approve a Task Order submitted by the Contractor in the form set forth in Exhibit 1 to this Attachment A in accordance with the process as further described in Attachment B. Task Orders are to be approved and signed by the State's Authorized Representative, the DVHA Business Office and the Contractor prior to work commencement. Stream 4 Task Orders as signed by the parties are hereby incorporated by reference into this contract.

Contractor's core project management team may be supplemented with the following subject matter experts:

- Release managers to oversee in-flight and future releases;
- Quality assurance lead and testers focused on testing practices, test facilitation, and support in the creation and execution of test cases;
- Technical writers focused on evaluating existing documentation and developing missing documentation; application architect/software engineer to oversee technical decisions and practices;
- Technical lead and or Enterprise Architect as appropriate to oversee development activities;
- Infrastructure engineer to provide guidance on performance, tuning, etc., O&M SME focused on overall CGI activities and service level monitoring; and support for VHC oversight of CGI contract. The number of SMEs and their time commitment will be refined based on the results of Stream 1 and in consultation with the State team. The Contractor shall supply the State with a multi-person project management team to provide oversight and support and staffing as necessary and defined by

Task Order in the following areas:

- IT development
- Testing (including Unit, Integration, System, Functional testing, and User Acceptance Testing)
- Release management (including process of code promotion to live environment, defect management)
- Training and documentation
- Overall contract compliance, invoice approval, etc.

The Contractor shall lead a process to modify the product delivery plan, as necessary, in conjunction with CGI and existing subcontractors and the State, to ensure that adequate time is available for both the delivery of high-quality software that is thoroughly tested and adequate time for the State team to perform training and other operational readiness activities. The Contractor shall assist the State with the proactive management of the VHC, CGI, and all subcontractors, to deliver according to planned timeframes; and shall facilitate work sessions as necessary to mitigate delays. To facilitate its IT project management and delivery support activity, the Contractor shall:

- Ensure 100% transparency of project information management (scope, schedule, and resource allocations). Collect, analyze and communicate status, risks and issues and proposed resolution to State leadership.
- Perform daily stand-up morning assignments and evening checkouts, identify risks and remediate daily.
- Provide technical expertise to evaluate quality through informal software demonstrations, document existing architecture, and identify gaps and risks.
- Provide testing expertise to develop test scenarios (unit tests, feature tests, regression tests, and or end-to-end tests) as necessary to ensure adequate test coverage and verify results.
- Ensure that documentation is up-to-date and comprehensive and that end user training is conducted in a timeframe that facilitates successful go-live for remaining code drops. Review backlog of Change Requests to confirm SOV prioritization and confirm the level of effort and cost estimates provided by the State's system integrator.
- Provide to the State an evaluation of all the tests in the regression suite and confirmation of test results.

The services identified in the Task Order for Stream 4 shall be provided to the State in accordance with the Task order, but no later than September 30, 2014.

III. Organization and Staffing (Account Team)

The Contractor will submit a staffing plan that details the Contractor personnel, level, roles and responsibilities, and team reporting relationships and identifies the approach to providing paired resource team reporting relationships (Contractor and State) for key staff roles. This plan will show Contractor's personnel hours by Stream, by personnel level and by role.

The Contractor will first submit staffing plans for Streams 1 and 2 prior to the respective kick-off dates. These plans will include specific team members who will perform the work, percent time dedicated by each team member to this Contract, and relevant experience with state health insurance marketplaces.

After the Contractor completes initial findings in Streams 1 and 2, the Contractor will submit detailed staffing plans for ongoing work informed by those findings.

The Contractor and State will hold regular meetings to discuss staffing plans to assure strong

communication about resources dedicated to this Contract.

- I. The term “Key Project Personnel” for purposes of this procurement, means Contractor personnel deemed by the State as being both instrumental and essential to the Contractor’s satisfactory performance of all requirements contained in this Contract. The State and the Contractor will agree on staffing plans described above, including Key Project Personnel and percent of time individual team members dedicate to this Contract.
- II. Location of Contracted Functions and Personnel
 - a. The Contractor’s Key Project Personnel must be able to participate during VHC-related meetings as scheduled by the State.
 - b. The State and the Contractor shall establish appropriate protocols to ensure that physical property/facility security and data confidentiality safeguards are maintained. Access to any non-Vermont facility used to support the HSE shall be reviewed and granted or denied within five workdays of the request.
- III. The Contractor must ensure Key Project Personnel have, and maintain, relevant current license(s) and/or certification(s).
- IV. The Contractor shall seek and receive State approval before hiring or replacing any Key Project Personnel which shall not be unreasonably withheld. The State shall respond to Contractor within 4 business days upon receiving name and resume of Contractor’s Key Project Personnel. The Contractor shall come to an agreement with the State on any State requests to remove Key Project Personnel. The Contractor will develop a plan for the replacement of Key Project Personnel, all within two (2) weeks of agreement to remove.

The Contractor must provide the State with written notification of anticipated vacancies of Key Project Personnel within two business days of receiving the individual’s resignation notice, the Contractor’s notice to terminate an individual, or the position otherwise becoming vacant. Replacements for Key Project Personnel shall have qualifications that meet or exceed those required by the State and shall be subject to approval by the State. The Contractor shall provide the State with periodic status update reports as the State may require but no less frequently than every 30 days on the progress of the replacement candidate recruiting process until a qualified candidate is hired.

**EXHIBIT I TO ATTACHMENT A
 Task Order 001 [numbered consecutively]**

Task Title:	
Contractor:	
Contract #:	
Effective Dates:	
Cost:	
Funding Source:	[CFDA # if different than original] Budget Approval _____ (Initials)

1. Scope of Work

2. Deliverables

3. Payment Provisions

Payment terms must specify if payments are based on an hourly rate or deliverables.

Approval:

Optum Authorized Representative	[Contact person]	
Approval Signature		Date
DVHA Business Lead:	[Contact Person]	
Approval Signature		Date
DVHA Contract Manager:	[Contact Person]	
Approval Signature		Date
DVHA Contract Administrator	[Contact Person]	
Approval Signature		Date

Comments: _____

Must be signed by all parties prior to commencement of work

ATTACHMENT B PAYMENT PROVISIONS

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually performed as specified in Attachment A up to the maximum allowable amount specified in this agreement. State of Vermont payment terms are Net 30 days from date of invoice. Payments against this Contract will comply with the State's payment terms. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. The following provisions specifying payments are:

1. The total maximum amount payable under this Contract shall not exceed \$5,690,242. All rates set forth in this contract are all-inclusive; no expenses, benefits or insurance will be deemed reimbursable to the Contractor by the State under this Contract.

Stream	Services	Deliverable Due Date	Amount
Stream 1	IT Plan	July 3, 2014	\$497,663
Stream 2	Operations Stabilization Plan	June 27, 2014	\$117,875
Stream 3	Supplemental Operations Support	Via Task Order	\$2,463,779*
Stream 4	IT Project Management and Staff Augmentation	Via Task Order	\$2,610,925*
Total			\$5,690,242

* Time and materials, dependent on task order

2. The State shall only pay the Contractor for Services rendered under Streams 1 and 2 at the time that required Deliverables are accepted by the State. Amounts per Deliverable are specified in the table above.
3. To the extent the State agrees to pay for certain Services under Streams 3 and 4 on a time and materials basis, as detailed in a Task Order, Contractor shall be paid in accordance with the terms of this Agreement and at the hourly rates specified in Exhibit I to this attachment.
4. The State shall have no obligation to initiate work Stream 3 or 4 and may, in its sole discretion decline to initiate either or both.

The State may initiate work under Streams 3 and 4 by requesting Task Order proposals from the Contractor. Each Task Order proposal shall be set forth in the form Attached as Exhibit 1 to Attachment A and shall include the following:

1. Project Contact
2. Type of Activity
3. Project Goal(s)
4. Brief Description of Project
5. Project Deliverable(s)
6. Estimated Project Duration/Phasing
7. Description of Expected Timeline of Project
8. "Not to Exceed" Budget

Upon the State's consideration of the Task Order proposal, and before any work may begin, the State shall review and accept or reject the Task Order. One accepted, it shall be submitted to the Contractor for execution. Both parties have the right to submit modifications or reject any Task Order. The final

Task Order document shall receive approval by the State and be signed by the Contractor, the State Authorized Representative, and the DVHA Business Office prior to engagement in the Task Order. Each Task Order must be signed by both parties before any work shall begin. Excluding the Specification of Work descriptions in Attachment A, and the maximum amount payable with respect to Streams 3 and 4, no Task Order entered into hereunder shall in any way amend, conflict with or supersede this Contract and any such provisions of a Task Order which purport to amend, conflict or supersede this Contract shall be void and have no effect. The parties acknowledge and agree that it is the intent of the assessments performed in Stream 1 and Stream 2 to establish the specific Specification of Work required to be performed in Stream 3 and Stream 4. The pricing set forth in Attachment B with respect to Stream 3 and Stream 4 may be increased or reduced, and milestone payments established as the parties may agree in a Task Order once the assessments in in Streams 1 and 2 have been performed. The terms and conditions of each Task Order shall be incorporated herein.

The State will not pay for services that are not previously approved in a Task Order by both authorized representatives listed within this section. The State Authorized Representative and the DVHA Business Office have final authority over whether a Task Order is initiated under this Contract. Changes to a Task Order shall be accomplished by written modification as agreed to by both parties and will be reflected in an amended and restated Task Order.

State Authorized Representatives:

Emily Trantum, Procurement Manager
Role: Contract Administrator
Department of Vermont Health Access
312 Hurricane Lane
Williston, VT 05495
emily.trantum@state.vt.us

Lindsey Tucker, Deputy Commissioner
Role: Contract Manager
Department of Vermont Health Access
312 Hurricane Lane
Williston, VT 05495
lindsey.tucker@state.vt.us

All notifications by the State shall be submitted to Contractor's Director of Accounting:

Authorized Contractor Representative:
Brian Holcomb, Director of Accounting
OptumInsight, Inc.
13625 Technology Drive, Eden Prairie, Minnesota, 55344
Brian.holcomb@optum.com

Kathlyn Wee, Senior Vice President
Optum Government Solutions
kathlyn.wee@optum.com

All Deliverables/Payment Milestones shall be delivered to the State in accordance with this Agreement and the applicable Task Order. The State will have 10 business days to review and accept all reports, plans and deliverables under this Agreement. Should the State require revisions to submitted reports,

plans or Deliverables, the Contractor shall be notified by the 10th business day of any revisions. The 10 day State review period shall begin the day after receipt of the Deliverable specified in this Agreement and any applicable Task Order. The Contractor shall not submit an invoice for any Deliverables required under this Agreement or any applicable Task Order until it has received written notice of acceptance of the Deliverables by the State.

5. No benefits or insurance will be reimbursed by the State.
6. Unless otherwise specifically provided herein or in a Task Order, the Contractor shall issue to the State, approximately sixty days in arrears, a separate invoice in U.S. Dollars for the amounts due for work completed in accordance with this Contract or a Task Order. Each invoice shall include detail and categories of information mutually agreed upon by the parties by each Stream as outlined in the Specification of Work or in a Task Order on which charges are based and include calculations used to establish charges. All periodic charges under this Contract (excluding charges based upon actual usage or consumption of Services) shall be computed on a calendar month basis and shall be prorated for any partial month. Invoices must be submitted to:

Business Office, Contracting Unit
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495

**EXHIBIT I TO ATTACHMENT B
RATE CARD**

IT Staff	RATE
Administrative/Clerical Level 2	\$ 81
Analyst Level 2	\$ 86
Analyst Level 3	\$ 104
Analyst Level 4	\$ 127
Analyst Level 5	\$ 161
Business Functions Associate Partner 1	\$ 460
Business Functions Partner 1	\$ 719
Computer Security Systems Specialist	\$ 115
Data Center Analyst	\$ 173
Database Management Specialist	\$ 132
Design & Development Engineer Level 2	\$ 115
Design & Development Engineer Level 3	\$ 155
Design & Development Engineer Level 4	\$ 178
Design & Development Engineer Level 6	\$ 230
Marketing Communications Consultant	\$ 109
Network Engineer	\$ 144
Performance Engineer	\$ 132
Product Manager	\$ 121
Product Researcher	\$ 121
Program Administration Specialist	\$ 86
Project Manager	\$ 207
Quality Assurance Manager	\$ 127
Quality Assurance Specialist	\$ 104
Senior Business Process Reengineering Specialist	\$ 150
Senior Comp Security Systems Specialist	\$ 161
Senior Program Administration Specialist	\$ 121
Senior Project Director Level I	\$ 259
Systems Operator	\$ 92
Telecommunications Network Engineer	\$ 115
Training Specialist	\$ 104
Operations Staff	RATE
Consumer Engagement Specialist	\$ 38
Consumer Engagement Coach	\$ 40
Program Manager	\$ 270
Senior Project Director Level 1	\$ 270
Project Manager	\$ 207
Analyst (Level 2)	\$ 86
Analyst (Level 3)	\$ 104
Analyst (Level 4)	\$ 127
Training Specialist	\$ 104

**ATTACHMENT C
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS**

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

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The Party shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Agreement.

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

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

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

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

General Liability and Property Damage: With respect to all operations performed under the 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 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

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

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

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

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of ***\$1,000,000*** per occurrence, and ***\$3,000,000*** aggregate.

- 8. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
- 9. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a single audit is required for the prior fiscal year. If a single audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.
- A single audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a single audit is required.
- 10. Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any

authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

- 11. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.
- 12. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
- 13. Taxes Due to the State:**
- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
 - c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
 - d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.
- 14. Child Support:** (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:
- a. is not under any obligation to pay child support; or
 - b. is under such an obligation and is in good standing with respect to that obligation; or
 - c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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

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

Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of

the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of or reorganization of the Party.

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

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

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

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at:

<http://bgs.vermont.gov/purchasing/debarment>

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

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

1. The requirements contained in Attachment C, Paragraph 1, are modified to add the following sentence:
Entire Agreement. In the event that one or more provisions of this contract are found to be invalid, unenforceable or illegal by a Court of competent jurisdiction, the remaining terms shall remain in full force and effect.
2. The requirements contained in Attachment C, Paragraph 4, are modified to amend the following paragraph:
Appropriations: In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State agrees to give notice to the Party within two business days after a non-funding event. This Agreement shall immediately terminate upon the Party's receipt of this notice and the State shall make payments for services rendered prior to the notification of the non-funding event.
3. The requirements contained in Attachment C, Paragraph 6, are modified to add the following:
Independence, Liability:
The Party shall not be responsible for the indemnity of the State to the extent damages or losses arise from the acts or omissions of the State, its officers or employees, including the State's unauthorized or inappropriate use of or modifications to the deliverables under this Contract.

Limitation of Liability:

CONTRACTOR'S AGGREGATE LIABILITY TO THE STATE OF VERMONT IN CONNECTION WITH STREAMS 1 AND 2 OF THIS AGREEMENT (WHETHER UNDER CONTRACT, TORT OR ANY OTHER THEORY OF LAW OR EQUITY) SHALL NOT EXCEED TWO (2.0) TIMES THE AGGREGATE MAXIMUM CONTRACT AMOUNT PAYABLE FOR STREAMS 1 AND 2. TO THE EXTENT THE STATE ELECTS TO PROCEED WITH STREAMS 3 AND/OR 4, CONTRACTOR'S AGGREGATE LIABILITY TO THE STATE OF VERMONT IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER CONTRACT, TORT OR ANY OTHER THEORY OF LAW OR EQUITY) SHALL NOT EXCEED TWO (2.0) TIMES THE AGGREGATE MAXIMUM CONTRACT AMOUNT AS THE SAME MAY BE MODIFIED FROM TIME-TO-TIME. CONTRACTOR'S AGGREGATE LIABILITY TO THE STATE OF VERMONT IN CONNECTION WITH A NOTIFICATION EVENT, AS DEFINED HEREIN, SHALL NOT EXCEED \$2 (TWO) MILLION DOLLARS.

CONTRACTOR SHALL NOT BE LIABLE TO THE STATE FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, OR DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY OR LOSS OF ANTICIPATED BUSINESS OR PROFITS IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

THE FOREGOING LIMITATIONS SHALL NOT APPLY TO STATE CLAIMS ARISING DIRECTLY OUT OF (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE FOR COPYRIGHT, PATENT OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT; (B) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (C) THE

CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE, OTHER THAN A NOTIFICATION EVENT OR (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR VIOLATIONS OF LAW CONSTITUTING MISCONDUCT.

4. The requirements contained in Attachment C, Paragraph 7, are substituted with the following language:

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

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

General Liability and Property Damage: With respect to all operations performed under the 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 Per Occurrence
- \$5,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$ 50,000 Fire/ Legal/Liability

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

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$5,000,000 combined single limit.

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

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain Technology Professional Liability insurance for any and all services performed under this Agreement, with minimum third party coverage of **\$1,000,000** per claim, **\$5,000,000** aggregate.

5. The requirements contained in Attachment C, Paragraph 10, are modified to add a clause to line two (2) of the following paragraph:

Records Available for Audit: The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to the cost incurred or the prices paid by State under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the

records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

6. The requirements contained in Attachment C, Paragraph 13, are modified to add the following clause.
Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished upon request covering taxable items.
7. The requirements contained in Attachment C, Paragraph 15 are modified to add the following sentence:
Sub-Agreements: Notwithstanding the foregoing, Party may utilize staff-augmentation contractors or staff from Affiliates in the ordinary course of business, and in every such instance, prior written approval of the State shall not be required. Party shall be responsible for liability arising from the acts or omissions of such contractors, affiliates and other agents.
8. In addition to the standard terms and conditions in Attachment C, the parties agree to the following terms with respect to the confidentiality of information and security breach notice:

Confidentiality of Contractor Information: The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Records Act, 1 V.S.A. § 315 et seq. (the “Act”). 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 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 Act. 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.

The State acknowledges that in the course of performing under this Agreement, or in the course of discussing or negotiating future agreements between the parties, the State may learn “Contractor Confidential Information”. Except as otherwise provided in the applicable laws of the State of Vermont, “Contractor Confidential Information” means information, whether presented orally or in writing, and whether or not marked as “confidential” or “proprietary,” 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 which do not know it or use it.

The State agrees that (a) it will use the Contractor Confidential Information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Agreement; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor Confidential Information as it provides to protect its own similar confidential and proprietary information; except as required by the 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 Agreement; (d) it will take all reasonable precautions to protect the Contractor's Confidential 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 shall affix an appropriate legend to Contractor Confidential Information that is provided under this Agreement to reflect the Contractor's determination that any such information is Contractor Confidential Information, which means either it is marked as "confidential" or "proprietary" at time of delivery or for information that is disclosed orally or visually, it is designated "confidential" or "proprietary" at the time of disclosure.

The Contractor agrees that such designation shall not prevent the State from complying with the Act.

Confidentiality of State Information. In performance of this Contract, and any Attachment or Exhibit hereunder, the Party acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law. In addition to the provisions of this Section, the Party shall execute the HIPAA Business Associate Agreement attached as Attachment E. Before receiving or controlling State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State. State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all information received and collected by Contractor in connection with this Contract ("State Data"). The Contractor agrees not to publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form or authorize or permit others to do so. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall use State Data only for the purposes of and in accordance with this Agreement. The Contractor shall provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information. The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

The Contractor shall follow the existing Vermont Health Connect (VHC) control framework during the term of this Agreement including industry standard administrative technical, and physical safeguards and controls consistent with *NIST (National Institute of Standard and Technology) Special Publication 800-53 (Rev.3 or higher)* and *Federal Information Processing Standards Publication 200* which are designed to (i) ensure the security and confidentiality of State Confidential Information; (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. The Contractor will utilize VHC technical measures to include at a minimum: (1) access controls on information systems, including multiple levels of authentication controls to 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) access VHC information systems through a secure encrypted network connection to State networks where provided by VHC; (4) follow technical controls prohibiting the ability to save or to store State Data ; (5) follow VHC dual control procedures, segregation of duties, and pre-

employment criminal background checks for employees with responsibilities for or access to State Confidential Information; (6) measures to ensure that the State Confidential Information shall not be altered or corrupted without the prior written consent of the State; and (7) completion of VHC staff training to implement the information security measures.

In the event the Contractor builds systems according to the Specifications of Work in Attachment A, Contractor shall follow the existing Vermont Health Connect (VHC) control framework during the term of this Agreement including industry standard administrative technical, and physical safeguards and controls consistent with *NIST (National Institute of Standard and Technology) Special Publication 800-53 (Rev.3 or higher)* and *Federal Information Processing Standards Publication 200* in accordance with federal regulations governing the use of data on state based insurance exchanges.

Security Breach Reporting: The Contractor acknowledges that in the performance of its obligations under this Contract, it may be a “data collector” pursuant to Chapter 62 of Title 9 of the Vermont Statutes (9 V.S.A. §2430(3)). In addition to the requirements set forth in any Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach the Contractor either suffers or learns of that compromises State Data (including PII, PHI or ePHI) in any format or media, whether encrypted or unencrypted (for example, but not limited to: physical trespass on a secure facility; intrusion or hacking or other brute force attack on any State environment; loss or theft of a PC, laptop, desktop, tablet, smartphone, removable data storage device or other portable device (; loss or theft of printed materials; or failure of security policies (collectively, a “Security Breach”), in accordance with 9 V.S.A. § 2435(b)(2), the Contractor shall notify appropriate State personnel of such Security Breach no later than two (2) business days after becomes aware of the Security Breach.

The Contractor’s report shall identify: (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.

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, HIPAA and/or HITECH) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification. In the event of a breach of any of the Contractor’s security obligations or other event requiring notification under applicable law (“Notification Event”), the Contractor agrees to fully cooperate with the State, assume responsibility for such notice if the State determines it to be appropriate under the circumstances of any particular Security Breach, and assume the costs associated with a Security Breach and Notification Event to the extent the Security Breach and Notification Event is the responsibility of the Contractor, including but not limited to, notice, outside investigation and services (including mailing, call center, forensics, counsel and/or crisis management), and/or credit monitoring.

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.

9. In addition to the standard terms and conditions in Attachment C, the parties add the following terms:

Inapplicability of Certain Affordable Care Act Provisions: The State understands that the Contractor

is 100% beneficially owned by OptumInsight, Inc., which is 100% beneficially owned by UnitedHealth Group, which also owns 100% of United Healthcare (UHC). In the event that United Health Care (UHC) intends to offer health plans on the Vermont Health Insurance Exchange, subject to applicable State law and regulation, and HHS' interpretation of the federal law 42 U.S.C. § 18031 (f)(3) and 45 C.F.R. 155.110, the State agrees its selection of health plans to offer on the Health Insurance Exchange will not be affected solely by the contractual relationship between the State and the Contractor, an Affiliate of UHC. This agreement is expressly subject to (i) HHS' interpretation of the federal law 42 U.S.C. § 18031 (f)(3) and 45 C.F.R. 155.110; and (ii) the eligibility of the Contractor under applicable State law. Further, this Agreement in no way limits the ability of the State of Vermont from determining to exclude the Contractor or its affiliates from participation as an insurance carrier on the State's Health Insurance Exchange for reasons other than this Contract. The State shall seek confirmation from HHS that (1) the eligible entity provisions at 42 U.S.C. § 18031(f) (3) and 45 CFR § 155.110, and (2) the requirements set forth in 45 C.F.R. § 155.215, do not apply to this Agreement. Upon receipt of such confirmation, the State will provide copy of the confirmation to Contractor.

10. In addition to the standard terms and conditions in Attachment C, the parties add the following term:

Price Determination: The parties recognize and agree that the IT services to be provided under this contract are commercial services sold in substantial quantities to the general public based on market prices, and the State has determined that the labor rates provided by the Party are in line with market prices for such services in the commercial marketplace, and are therefore fair and reasonable.

11. In addition to the standard terms and conditions in Attachment C, the parties add the following term:

Award of Agreement: DVHA represents and certifies Contractor has been awarded this contract in accordance with applicable State law and policy.

12. In addition to the standard terms and conditions in Attachment C, the parties add the following terms:

Mitigation of OCIs:

Contractor acknowledges and agrees that, in the performance of this Agreement it may have access to State Confidential Information of a precise nature that is related to the HSE and the VHC ("Inside Information"). Further, Contractor acknowledges and agrees that this access to Inside Information could potentially provide it with a competitive advantage were it to seek to participate in a solicitation to perform additional services for the State related to the HSE. In order to mitigate this potential conflict of interest or the appearance of a conflict of interest, Contractor shall maintain a system of policies, procedures and safeguards (collectively "Protective Measures"), to prevent the inadvertent transfer of Inside Information between Contractor personnel assigned to perform Services under this Contract and Contractor personnel engaged in the development of the proposal response for the Integrated Eligibility procurement where Inside Information could provide Contractor or its affiliates with an unfair competitive advantage. Protective Measures shall include but are not limited to the following: Identifying individuals who are engaged in the performance of this contract who may have access to Inside Information; establishing directives that such individuals only use Inside Information for purposes of carrying out the Contract and that they do not communicate Inside Information to any other Contractor teams or personnel engaged in State of Vermont projects or pursuits; and establishing a secure, data environment, such as a secure SharePoint, to house all such Inside Information utilized by Contractor to perform the Contract. Contractor's Protective Measures shall be designed to ensure that all Inside Information is only accessible to Contractor Personnel on a program specific need-to-know basis and to prevent the transmission of Inside Information to any other Contractor Personnel. The Protective Measures will be put in place upon execution of this Agreement and shall remain in place until the award of the Integrated Eligibility contract.

By executing this contract, and assuming Contractor's strict compliance with the Contractor's foregoing agreement regarding the institution of Protective Measures, the State has determined that the Party's performance of the Services does not create a current Organizational Conflict of Interest ("OCI"). In the event Contractor subsequently becomes aware of any OCI, Contractor will promptly notify the State, propose a mitigation plan, if needed, and will not proceed until mutually acceptable means are taken to mitigate the OCI where the parties jointly determine that such a mitigation plan is required.

13. In addition to the standard terms and conditions in Attachment C, the parties add the following terms:

Force Majeure: The failure of either party to perform under this Agreement shall be excused, and shall not be cause for termination, to the extent such failure to perform is due to the extent a party is hindered or prevented from complying therewith because of labor disturbances (including strikes or lockouts) outside of the non-performing party's control, acts of war, acts of terrorism, vandalism or other aggression, acts of God, fires, storms, accidents, governmental regulations outside of a party's control, failure of Internet access or service, or any other cause whatsoever beyond a party's control.

14. In addition to the standard terms and conditions in Attachment F, subsection 10, the parties add the following terms:

Intellectual Property/Work Product Ownership

This Agreement is in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, and is subject to, and incorporates by reference, 45 C.F.R. 74.36 and 45 C.F.R. 92.34 governing rights to intangible property. The Contractor must deliver all intangible property, including but not limited to, intellectual property, to the State in a manner that ensures the Centers for Medicare & Medicaid Services, an Agency of the Department of Health and Human Services, obtains the rights required by the above-cited regulations.

The State shall retain all right, title and interest in and to all data content provided by the State, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder ("**State Information**"), and all other rights, tangible or intangible (collectively, "**State Intellectual Property**"). Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

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. Without any additional cost to the State, Contractor shall promptly give the State all reasonable assistance and execute all documents the State may reasonably request to assist and enable the State to perfect, preserve, enforce, register and record its rights in and to all Work Product. Contractor hereby appoints the State, through its designated signatory, as Contractor's agent and Attorney-in-Fact to execute, deliver and file, as and if necessary, any and all documents necessary to give effect to the provisions of this Section and to take all actions necessary therefore, in Contractor's stead and name, with the same force and effect as if executed, delivered and/or filed by Contractor.

“**Work Product**” means any tangible or intangible work product, creation, material, item or deliverable, documentation, information and/or other items created by Contractor, either solely or jointly with others, and which are developed, conceived of, prepared, procured, generated or produced by Contractor specifically for this Contract. Work Product may include ideas, inventions, improvements, discoveries, methodologies or processes, or writings, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, specifications, operating instructions, procedures manuals, or other documentation, whether or not protectable under Title 17 of the U.S. Code and whether or not patentable or otherwise protectable under Title 35 of the U.S. Code, that are developed, conceived of, prepared, arise, procured, generated or produced in connection with this Contract, whether as individual items or a combination of components and whether or not the services or the deliverables are completed or the same are reduced to practice during the Contract term. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Technology, provided the State shall be granted a non-exclusive license to any such Contractor Technology that is incorporated into Work Product solely for the State’s internal use and used solely as part of the Work Product. The license to Contractor Technology may be subject to applicable fees on such terms as the parties may agree.

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

State hereby grants to Contractor an irrevocable, perpetual, world-wide license to use, have used, improve, further develop and sub-license intangible Work Product developed under this Agreement for any legal business purpose. State may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under this Agreement.

Contractor shall report to the State, promptly and in written detail, any notice or claim of copyright infringement received by Contractor with respect to all deliveries under this Agreement.

To the extent Contractor delivers any intangible property developed with private funding or otherwise developed outside the scope of this Agreement, the State will have Restricted Rights (1) if such property is non-commercial software; (2) the vendor’s standard commercial license, if such property is commercial software; and (3) limited rights, if such property is other than software. Restricted Rights means that the software may not be used, reproduced, or disclosed except that it may be: (1) used or copied for use with the computer(s) for which it was acquired; (2) used or copied for use with a backup computer if any computer for which it was acquired is inoperative; (3) reproduced for safekeeping (archives) or backup purposes; (4) modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights; (5) disclosed to and reproduced for use by support service contractors or their subcontractors for one of the purposes described in (1) through (4), provided that the State provides prior notice to Contractor and obtains a non-disclosure agreement with the recipients; and (6) used or copied for use with a replacement computer.

Limited Rights means that the property may be reproduced and used by the State with the express limitation that they will not, without the written permission of Contractor, be used for purposes of manufacture nor disclosed outside the State government.

When feasible, Contractor shall affix an appropriate legend to intangible property delivered under the

contract to reflect whether it is (1) developed under the contract with contract funds, entitling the State to a license for State purposes; (2) developed outside the contract or with private funds, and subject to Restricted Rights or Limited Rights; (3) commercial software subject to the terms of a commercial software license.

In performing the work, Contractor will use its proprietary intangible property, including tools and information that it will not deliver under the contract. The State obtains no rights in any intangible property that is not a deliverable under the contract.

To the extent that the Contractor delivers any commercial computer software under this agreement, whether such software is owned by the Contractor or a third party, the State shall receive the licensor's standard commercial license rights with respect to such software.

15. **State Facilities.** During the term of this Contract, the State may make available to Contractor space in any State facility applicable to the services set forth in Attachment A hereto ("Services"), subject to the conditions that Contractor; (i) shall only use such space solely and exclusively for and in support of the services; (ii) shall not use State facilities to provide goods or services to or for the benefit of any third party; (iii) shall comply with the leases, security, use and rules and agreements applicable to the State facilities; (iv) shall not use State facilities for any unlawful purpose; (v) shall comply with all policies and procedures governing access to and use of State facilities that are provided to Contractor in writing; (vi) instruct Contractor personnel not to photograph or record duplicate, disclose, transmit or communicate any State information, materials, data or other items, tangible or intangible, obtained or available as a result of permitted use of the commencement of this Contract, ordinary wear and tear excepted. State facilities will be made available to Contractor on an "AS IS, WHERE IS" basis with no warranties whatsoever.

16. **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. All deliverables will be free from material errors and shall perform in accordance with the specifications therefor at the time of delivery.
- v. The Contractor 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 and 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.
- vi. Each and all of the services shall be performed in a timely, diligent, professional and workpersonlike 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. The Contractor has adequate resources to fulfill its obligations under this Contract.
- vii. 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. 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.

17. **Continuity or Performance.** In the event of a dispute between the contractor and the State, each party will continue to perform its obligations under this Contract during the resolution of such dispute unless and until this Contract is terminated in accordance with its terms.
18. **Independent Review.** The Contractor acknowledges and agrees that the State is required pursuant to 3 V.S.A. § 2222 to obtain an independent expert review of this contract and the services to be rendered hereunder, which review shall be commenced as soon as practicable, after the Effective Date of this contract. Such review will include, as required by law: (A) an acquisition cost assessment; (B) a technology architecture review; (C) an implementation plan assessment; (D) a cost analysis and a model for benefit analysis; (E) a procurement negotiation advisory services contract; and (F) an impact analysis on net operating costs for the Agency carrying out the activity. Upon completion of the review, and upon the State's request, the Contractor shall meet with the State to discuss the results and the Contractor will cooperate with the State to address any aspects of the contract or services that are identified in the review as the State deems necessary. The Contractor acknowledges and agrees that the Contract and/or applicable Task Orders may be amended to address the issues necessary in the review on such terms as the parties may agree.
19. **No Offshore Services.** Contractor shall not conduct business operations services involving State Data and federal data governed by privacy laws and regulations ("Protected Information") in connection with this Contract offshore. At no time shall the Contractor maintain, use, transmit, or cause to be transmitted Protected Information outside the United States and its territories.

Approval:

Assistant Attorney General: _____

Date: _____

ATTACHMENT E BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its Department of Vermont Health Access (“Covered Entity”) and OptumInsight, Inc. (“Business Associate”) as of June 6, 2014 (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

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

The parties agree as follows:

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

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

“Breach” means the acquisition, access, use or disclosure of protected health information (PHI) which compromises the security or privacy of the PHI, except as excluded in the definition of Breach in 45 CFR § 164.402.

“Business Associate shall have the meaning given in 45 CFR § 160.103.

“Individual” includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“Protected Health Information” or PHI shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Agency.

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

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

“Subcontractor” means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

2. Identification and Disclosure of Privacy and Security Offices. Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the

Covered Entity's contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

3. Permitted and Required Uses/Disclosures of PHI.

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

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 17 or, (b) as otherwise permitted by Section 3.

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

4. Business Activities. Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the Agreement requires the person or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

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

6. Documenting and Reporting Breaches.

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its

employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

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

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

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

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

8. Providing Notice of Breaches.

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

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in

section 8.1

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

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

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

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

10. Access to PHI. Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR § 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

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

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

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

14. Termination.

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 18.7.

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

15. Return/Destruction of PHI.

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

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

16. Penalties and Training. Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

17. Security Rule Obligations. The following provisions of this section apply to the extent that Business

Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

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

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

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

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

18. Miscellaneous.

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract/grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract/grant continue in effect.

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

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

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

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

18.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all

PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity even if some of that information relates to specific services for which Business Associate may not be a “Business Associate” of Covered Entity under the Privacy Rule.

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

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 9/21/13)

ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.
2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org

3. **Medicaid Program Contractors:**

Inspection of Records: Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to:

Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and Inspect and audit any financial records of such Contractor or subcontractor.

Subcontracting for Medicaid Services: Having a subcontract does not terminate the Contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the Contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the Contractor or subcontractor's performance is inadequate. The Contractor agrees to make available upon request to the Agency of Human Services; the Department of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers.

Medicaid Notification of Termination Requirements: Any Contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Department of Vermont Health Access, Managed Care Organization enrollee notification requirements.

Encounter Data: Any Contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must 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) to support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency.** The Contractor agrees to 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, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required

to pay for such services.

5. **Voter Registration.** When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.
6. **Drug Free Workplace Act.** The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.

7. **Privacy and Security Standards.**

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

Substance Abuse Treatment Information: The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

Other Confidential Consumer Information: The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

Social Security numbers: The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911(c)(3)).
9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who 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 make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

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

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

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

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

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

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

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

The State will not supply e-mail accounts to the Contractor.

13. **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.

14. **Non-discrimination.** The Contractor will prohibit 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, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

The Contractor will also 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 under Title 9 V.S.A. Chapter 139.

15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

The law does not apply to children's services provided in private residences; 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.

Failure to comply with the provisions of the 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.

Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.