

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Gartner Consulting, with a principal place of business in 3193 Alton Road, Atlanta, GA 30341 (hereafter called "Contractor"). The Contractor's form of business organization is a corporation. 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 generally on the subject of Readiness Assessment, Planning, Requirements, Procurement Support and Quality Assurance Oversight for the Integrated Health and Human Services Program. Detailed services to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$2,554,500.
4. **Contract Term.** The period of Contractor's performance shall begin on May 16, 2012 and end on May 15, 2013.
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 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 by either party by giving written notice at least 30 days in advance.
8. **Attachments.** This contract consists of 41 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 Insurance
 - Attachment E - Business Associate Agreement
 - Attachment F - Customary Contract Provisions of the Agency of Human Services
 - Attachment G – Technical Reference, Research and Advisory Services
 - Appendix I – DVHA, DHR High Level Business Architecture Schematic

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

PHILLIP A. CUMMINGS, SR. DIRECTOR,
GOVERNMENT CONTRACTS DATE

ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

The Contractor will assist the State to expedite the progress of its Integrated Health and Human Services Program (HHS) with emphasis on ensuring the delivery and operation of an integrated eligibility solution for Medicaid expansion and the Health Benefits Exchange (HIX). The Contractor will also assist in sequencing build out of the Health Services Enterprise leveraging enhanced federal 90/10 funding for Eligibility & Enrollment (E&E) by December 15, 2015, the sequencing and planning for additional procurements and build out of technologies to support the State's Medicaid Enterprise Solution (MES), the Blueprint for Health and the digital infrastructure of a learning health system as shown in Appendix I. This contract will meet all federal requirements related to 42 CFR 495 procurement requirements.

Specifically, the Contractor will ensure that the State is able to move rapidly to development and publishing of a Request for Proposal (or other relevant procurement vehicle) which will:

- Focus on Meeting Affordable Care Act (ACA) and Center for Medicare & Medicaid Services (CMS) Timeline for Modified Adjust Gross Income (MAGI), Medicaid Expansion and HIX capabilities by January 2014
- Provide the appropriate Level of detail required to ensure that vendors clearly understand:
 - The business and technical context of the State, including what's commonly referred to by CMS as the 'To-Be' state
 - "What the State wants" in terms of the set of components required to support of the State's model of practice aligned with the Blueprint for Health and the Health Services Enterprise including -
 - Meeting ACA and CMS Timeline for healthcare reform integrated eligibility by January 2014
 - Providing the Functions and Capabilities Required
 - Providing a platform that is Extensible and Scalable to support the vision for full eligibility integration (beyond Medicaid/CHIP and HIX to other Vermont programs/services)
 - A more integrated approach to Vermont HHS programs by December 2015
 - Leveraging the maximum FFP 90/10 for the full Health Services Enterprise, including procurement of a Medicaid Information Technology Architecture (MITA) compliant Medicaid Management Information System (MMIS), enterprise data warehouse and analytics solutions to serve Medicaid, HIX, and other Vermont health care and human services programs, departments, and initiatives.
 - The business case and benefits to be achieved
 - The project office and infrastructure in which the vendor will work
 - The Architectural Standards and General System Design preferred for the Health Services Enterprise
 - The Functional and Non-Functional Requirements (Technical, Implementation and Performance) envisioned by the State for the Health Services Enterprise

In this context, the Contractor will conduct a thorough assessment of the potential for utilizing an approach based on that used by the State of Oregon transferring Oregon's solution using the Oracle SOA suite of licenses the State of Vermont currently owns, as well as Oracle and other vendor SOA components utilized by Oregon that are not currently licensed by the State. The Contractor will also conduct a thorough assessment of the potential for reuse of technologies and approach used by the State of Massachusetts and the New England States Collaborative for Insurance Exchange Systems (NESCIES) and its applicability to Vermont.

The Contractor will work collaboratively with other State contractors and sub-contractors supporting the work of HIX and Health Services Enterprise portfolio of projects to ensure a comprehensive, coordinated set of work products and deliverables aligned to meet the State's goals. Those contractors and sub-contractors include but are not limited to Wakely Consulting Group, KPMG, Action Mill, LLC, Pacific Health Policy Group, and GMMB.

- The Contractor will assign senior level staff to this project who have depth in Health and Human Services,

- and federally funded state systems planning requirements
- The Contractor's work will be done both on-site and off-site
- The Contractor will use focused interview processes and conduct interviews individually or in groups and in-person or by audio/Web conference
- The State will provide office space for a maximum of four consultants when project staff are on-site.
- The Scope of Work has been expedited and assumes that a final Request for Proposal (RFP) or set of RFPs (up to three) will be issued by week 14 of the project and that selected vendor(s) will be engaged by week 22 and that the quality assurance work stream will begin during week 18 of the project
- The Contractor will provide a consistent level of effort at a firm fixed price while working with the State to readjust timelines as necessary during the life cycle of the project as long as timeline adjustments do not impact the level of effort necessary to deliver the agreed upon deliverables
- State staff and current consultants are developing Functional Requirements to the level of specificity necessary to describe the State's expectations for Integrated Eligibility (IE) for Medicaid expansion and HIX as well as for the capabilities required for IE for all programs and for the Health Services Enterprise to support a person centered approach to the State's Health and Human Services. Thus, under this agreement the Contractor will be engaged in the review, assessment and recommendations for completing functional requirements, but the scope of work for this agreement does not include the final development of such requirements at this point.
- The Contractor will perform the review, assessment and finalization of the non-functional (technical, implementation and performance) and general systems design requirements for the Integrated Eligibility (IE) solution for Medicaid expansion and HIX as well as the technical capabilities required for IE for all programs and for the Health Services Enterprise.
- The Contractor will develop the business case, understanding, requirements, costs submission framework and evaluation framework and procurement library for three (3) RFPs, but will not be responsible for developing other terms and conditions and standard State contract language

The State will:

- Assign a point of contact that will coordinate the Contractor's work efforts and will support key project logistics including:
 - Access to required documentation
 - Identification of stakeholder participants for interviews
 - Space for on-site interviews, workshops, working sessions and stakeholder briefings
 - Identification of participants for identified workshops and stakeholder briefings
 - Scheduling and invitations for identified workshops, working sessions and stakeholder briefings
 - Room reservations for the identified workshop, working sessions and stakeholder briefings including projector and flip charts
 - Support for ongoing coordination meetings with Federal partners to ensure project efforts are aligned with Federal expectations and requirements
- Establish a core team to oversee the work stream efforts defined in this proposal
- Designate staff to review and approve project deliverables within agreed upon times lines defined in the approved project work plan and work breakdown structure
- Identify a core team to provide guidance to the Contractor in the development of the RFP(s) during the procurement assistance work stream—including Contract and legal staff
- Identify a proposal evaluation team for the procurement assistance work stream that will be trained and supported by the Contractor in the evaluation of vendor proposals, and in their participation in vendor Q&A process, vendor orals and best and final offer
- Identify a core team for the quality assurance and oversight work stream that will work with the Contractor to implement the quality assurance office.
- Any requests for additional information (beyond the outlined scope of this contract) that are made by the State will be considered a change in scope for this engagement and will be reduced to writing and signed by

both parties.

- All deliverables will be developed using Microsoft products (for example, Project, Excel, and/or Word, and when agreed upon by both parties, PowerPoint).

1.1 Procurement Process

Phase I. Organizational Level of Readiness

The Contractor will conduct an assessment of strengths and risks of the State's current organizational structure and capabilities in the following key six domains and provide recommendations (activities and timeline) to build on strengths and address risks to a successful procurement process and the sequencing, build out and ongoing maintenance and operations of the envisioned health services enterprise infrastructure components. The readiness assessment domains include:

- A. Governance and Project Management Structure
- B. Project Vision and Strategy
- C. Enterprise Architecture and Technology
- D. Organization Capacity and Skills
- E. IT Operations and Resource Management
- F. Culture and Change Management

The readiness assessment will highlight strengths and weaknesses in decision making, project implementation, technical infrastructure, resource capacity and organizational change management capabilities. It can be used as a basis for planning for design and implementation of the new systems and processes and will highlight gaps that need to be addressed to enhance likelihood of success. It will also provide recommendations for an overall governance and organization structure for the program.

Task 1. Project Initiation

Objectives

- Ensure the Contractor and State project teams are aligned on the goals, objectives, responsibilities and work plan
- Agree on how the Contractor and State project teams will work together to coordinate efforts and on how the project will be managed
- Identify the sources of data for the data discovery work

To complete this objective the Contractor will develop materials and facilitate kick-off sessions, finalize project work plan and milestones and key deliverables timeline for Vermont approval and begin discovery activities. The State will ensure active participation from core project team, provide relevant documentation, identify key stakeholders and manage meeting logistics.

Deliverables

- Detailed Work Plan
- Kick-Off Presentation

Task 2. Define Project Drivers and Vision

Objectives

- Identify key drivers and expected outcomes against which the program will be assessed

The Contractor will conduct data gathering and develop workshop materials and facilitate workshop. The State will provide documentation and attend at interviews and at workshop

Deliverables

- Refined assessment framework
- Business drivers and vision workshop material

Task 3. Current State Assessment

Objectives

- Assess organizational readiness and develop recommendations to address identified gaps

The Contractor will apply framework and conduct readiness assessment analysis, develop as-is findings and to-be recommendations, and review and refine deliverables. The State will attend workshops and provide active feedback, and manage meeting logistics.

Deliverables

- Readiness Assessment as-is findings
- To-be target state and recommendations to achieve the future state, as outlined in Appendix I

Task 4. Final Reporting and Presentation

Objectives

- Communicate findings and obtain executive commitment for organizational readiness building

The Contractor will develop final report and develop and deliver executive summary presentation(s). The State receives and accepts recommendations and planning.

Deliverables

- Workshop material
- Final organizational readiness report, findings and recommendations

Phase II. Functional Requirements Validation

The Contractor will review the State's current process for defining functional requirements, assessing the current state of requirements definition. The Contractor will provide recommendations for finalizing functional requirements to support procurement efforts, for finalizing a contract with selected vendors and for the design, development and implementation effort. The Contractor's recommendations will focus on the following core functional capabilities:

- A. Integrated eligibility across all programs with initial focus on Healthcare—Medicaid, Children's Health Insurance Program (CHIP) and HIX to be achieved by January 2014
- B. Consumer self sufficiency—eligibility application, status management and personal care record
- C. Look up and query for consumers, staff and providers
- D. Managing referrals
- E. Collaboration tools and virtual record supporting collaboration
- F. Financial management
- G. All claims and payment
- H. "Pushed"—notices, alerts, dashboards and other pushed decision support tools and reports
- I. "Pulled"—accessing information to support activities and decisions—standard, ad hoc parameter driven and higher level analytical reporting capabilities

The Contractor will assess current processes and progress toward the definition of functional requirements. The Contractor will also recommend processes for developing functional requirements which will:

- Be aligned with and traceable to business objectives and strategies
- Support procurement efforts
- Guide the design, development and implementation effort

Task 1. Work Stream Kick Off

Objectives

- Ensure that expectations and process for the work stream are clear and agreed upon

The Contractor will develop kick-off session materials and facilitate sessions, finalize a work stream milestone

and key deliverables timeline, and begin discovery activities. The State will ensure active participation from core project team, provide relevant documentation, identify key stakeholders and manage meeting logistics.

Deliverables

- Detailed work plan
- Kick-off presentation

Task 2. Data Gathering and Analysis

Objectives

- Assess process and outcome of functional requirements gathered to date

The Contractor will gather data, apply its assessment and validation framework, facilitate a workshop for State staff, and refine outcomes based on the workshop. The State will provide relevant documentation, attend individual and group interviews, and actively participate in the functional requirements assessment workshop.

Deliverables

- Work shop materials
- Workshop
- Draft and final functional requirements assessment

Task 3. Go Forward Recommendations

Objectives

- Develop and present recommendations to enhance the process and outcome of collecting and documenting Functional Requirements

The Contractor will develop draft recommendations, present recommendations and refine to reflect feedback received from the State. The State will attend and provide feedback at recommendations workshop.

Deliverables

- Draft and final recommendations

Task 4. Final Functional Requirements Validation Report and Road Map

Objectives

- Present final recommendations and action-oriented road map for implementing them to core stakeholders

The Contractor will develop workshop materials, recommendations, and road map, facilitate workshop for State staff, and refine deliverables based on workshop feedback. The State will attend the workshop and provide feedback.

Deliverables

- Functional requirements enhancement recommendations
- Workshop
- Functional requirements enhancement road map

Phase III. Non-Functional Requirements Validation

The Contractor will review the current process for defining non-functional requirements, assessing the current state of non-functional requirements definition. The Contractor will provide recommendations for finalizing non-functional requirements to support procurement efforts, finalizing a contract with selected vendors, and for guiding the design, development and implementation effort. The recommendations will focus on the following core domains:

- A. Enterprise architecture principles and standards
- B. General system design

- C. Core health services enterprise components and capabilities
- D. Application and integration of Oracle 53 Key service oriented architecture (SOA) Infrastructure Components
- E. Implementation approach, dependencies and sequencing
- F. Performance and service levels
- G. Hardware and software
- H. Hosting
- I. Maintenance and operations

Objectives

The Contractor will assess current processes and progress toward the definition of non-functional requirements, general system design and architectural principles and standards. The Contractor will recommend processes for developing non-functional requirements which will:

- Be aligned with and traceable to business objectives and strategies
- Align with current State standards for such areas as technical architecture, service levels, security, among others
- Support procurement efforts
- Guide the design, development and implementation effort

Task 1. Work Stream Kick-Off

Objectives

- Ensure that expectations and process for the work stream are clear and agreed upon

The Contractor will develop kick-off session materials and facilitate session, finalize work stream milestone and key deliverables timeline and begin discovery activities. The State will ensure active participation from Core Project Team, provide relevant documentation, identify key stakeholders and manage meeting logistics

Deliverables

- Work stream plan
- Kick-off session

Task 2. Data Gathering and Analysis

Objectives

- Assess process and outcome of non-functional requirements gathered to date

The Contractor will gather data, perform application of assessment and validation framework, facilitate workshop, and refine outcomes based on workshop. The State will provide relevant documentation, attend individual and group interviews and actively participate in the General Systems Design (GSD) and non-functional requirements assessment workshop

Deliverables

- Work shop materials
- Workshop
- Draft and final GSD and non-functional requirements assessment workshop

Task 3. Go Forward Recommendations

Objectives

- Develop and present recommendations to enhance the process and outcome of collecting and documenting the GSD and Non-Functional Requirements

The Contractor will develop draft recommendations and present recommendations and refine to reflect feedback received from the State. The State will attend and provide feedback at Recommendations workshop

Deliverables

- Workshop
- Draft and final recommendations

Task 4. Final Non-Functional Requirements Validation Report and Road Map

Objectives

- Present final recommendations and action-oriented road map for implementing them to core stakeholders

The Contractor will develop workshop materials, recommendations, and road map and facilitate workshops and refine deliverables based on workshop feedback. The State will attend the workshop and provide feedback.

Deliverables

- Workshop
- Non-functional requirements enhancement recommendations
- Non-functional requirements enhancement road map

Phase IV. Alternatives Analysis

The Contractor will analyze the strengths, benefits and risks of alternatives for building out the modular solution pattern for the Vermont Health Services Enterprise. The analysis will be based on the functional and non-functional requirements, and on using Oracle's 53 Key SOA Infrastructure Components, other essential solution components, and development approaches such as build ground up, whole cloth transfer, transfer and configure, Component Off the Shelf (COTS), combination. The analysis will use the following weighted criteria:

- Alignment with Blueprint for Health vision, strategy and functional requirements
- Alignment with technical and performance requirements
- Time to deployment and alignment with ACA timeline
- Costs for implementation
- Costs for maintenance and operations
- Risks

Objectives

- Identify the range of alternative technical approaches for building out the modular solution pattern for the Vermont Health Services Enterprise integrating the portfolio of components essential to support the vision for the Blueprint for Health
- Assess the feasibility of transferring the Oregon solution and approach
- Develop a recommendation based on a structured analysis
- Conduct a thorough assessment of the Oregon transfer approach and solution to determine its applicability to address the strategic direction and the functional and nonfunctional requirements identified and to ensure achievement of the project's key timelines for leveraging enhanced federal funding

Phase IV Overview

Task 1. Work Stream Kick-Off

Objectives

- Ensure that expectations and process for the work stream are clear and agreed upon

The Contractor will develop kick-off session materials and facilitate session, finalize work stream milestone and key deliverables timeline, and begin discovery activities. The State will ensure active participation from core project team, provide relevant documentation, identify key stakeholders and manage meeting logistics

Deliverables

- Kick-off session
- Work stream plan

Task 2. Evaluation Framework

Objectives

- Develop an agreed framework and approach to use for assessing alternative approaches

The Contractor will develop analysis and scoring framework, identify range of potential alternatives to be considered, and review and refine framework and range of alternatives in a facilitated workshop. The State will review draft framework and range of alternatives, and participate in assessment framework validation workshop.

Deliverables

- Workshop
- Refined assessment framework including key criteria and weighting and scoring algorithms
- Descriptions for a complete range of alternatives to be considered
- Description of the Oregon solution and approach transfer hypothesis

Task 3. Alternative Assessment

Objectives

- Develop agreed upon approach for building out the modular solution pattern for the Vermont Health Services Enterprise and integrating the portfolio of components essential to support the State's vision for the Blueprint for Health

The Contractor will apply framework and develop prioritized alternative approaches, present prioritized list and recommendations in a facilitated workshop. The State will review draft findings and recommendations, and participate and provide feedback in workshop.

Deliverables

- Workshop materials including descriptions and strengths and weaknesses of approaches in priority order
- Workshop
- Recommended approach for building out the modular solution pattern for the Vermont Health Services Enterprise integrating the portfolio of components essential to support the State's vision for the Blueprint for Health

Task 4. Alternative Approach Recommendation Report and Road Map

Objectives

- Present to core stakeholders recommendations for building out the modular solution pattern for the Vermont Health Services Enterprise and an action-oriented road map for implementing it

The Contractor will develop workshop materials, recommendations, and road map and facilitate workshop, and refine deliverables based on workshop feedback. The State will attend the workshop and provide feedback.

Deliverables

- Workshop
- Recommended approach to achieving IE including HIX
- Recommended approach and road map for building out the modular solution pattern for the Vermont Health Services Enterprise

Phase V. Procurement Strategy and Timeline

The Contractor will develop a procurement strategy and timeline based on results of the alternatives analysis and taking into account factors of time, cost, staffing and capabilities. The strategy and timeline will consider both

in- and out-sourcing alternatives, and will address the following subjects:

- Procurement Strategy
 - Technology
 - Services (DDI, training, deployment)
 - Hosting components
 - Maintenance and operations
- Sourcing strategy
 - Staffing needs
 - Contractual needs / systems integrator
- Procurement vehicles
 - Request for Information (RFI)
 - Request for Qualifications (RFQ)
 - Master service agreement/contract
 - Single or multiple RFP
- Procurement timeline and dependencies

Task 1. Work Stream Kick-Off

Objectives

Ensure that expectations and process for the work stream are clear and agreed upon by both parties.

The Contractor will develop kick-off session materials and facilitate session, finalize work stream milestone and key deliverables timeline and begin discovery activities. The State will ensure active participation from core project team, provide relevant documentation, identify key stakeholders and manage meeting logistics

Deliverables

- Kick-off session
- Work stream plan

Task 2. Define Procurement Scope

Objectives

Identify key technology and service elements to be procured, and available high level alternatives.

The Contractor will inventory key technologies and services to be procured, analyze current capabilities and standards, and review and refine procurement Scope in a facilitated procurement scope validation workshop. The State will review draft findings and attend and actively participate in the procurement scope validation workshop.

Deliverables

- Workshop
- Inventory of key technologies and services to be procured, and available high level alternatives.
- Analysis of current Vermont capabilities and standards which apply to them.

Task 3. Define Sourcing Strategy

Objectives

Identify an integrated strategy for sourcing all of the necessary technologies and services in an expeditious and cost-effective manner

The Contractor will develop overall strategy for individual and bundled procurements including high level plan and validate and refine the strategy during a facilitated workshop. The State will review draft strategy and attend at and participate in procurement strategy validation workshop.

Deliverables

- Workshop
- Procurement strategy

Task 4. Final Procurement Strategy Report and Timeline

Objectives

Present to core stakeholders the final recommendations and timeline for procurement strategy

The Contractor will develop workshop materials, recommendations, and timeline, facilitate workshop, and refine deliverables based on workshop feedback. The State will attend the workshop and provide feedback.

Deliverables

- Workshop
- Agreed upon procurement strategy and road map

Phase VI. Procurement Assistance

Support procurement of the Health Services Enterprise key components and services. This support will include:

- Developing necessary RFI
- Developing necessary RFQ
- Developing RFPs
- Procurement evaluation process and criteria
- Development of proposal evaluation tools - for both technical and cost proposal
- Training of the State's proposal evaluation team
- Facilitation support of proposal evaluation to identify down selected vendors ("Shortlist")
- Support development of agenda and questions for orals with down selected vendors
- Develop corporate reference template and questions
- Develop key personnel reference template and questions
- BAFO Support
- Final contract negotiations support

Objectives

Develop RFP and proposal review best practices for:

- Building out the envisioned Vermont Human Services Enterprise and its components in support of the Blueprint for Health
- Developing a comprehensive RFP package—RFP master; attachments; procurement library; and RFP scope of work; functional and non-functional requirement; service levels; hosting requirements, and Terms and Conditions (T&Cs)
- Establishing an effective proposal evaluation framework, plan and methodologies
- Planning and facilitating the vendor orals, BAFO and contract discussions
- Supporting final vendor selection and the establishment of the contract negotiation baseline
- Providing a RFP, vendor response and contract that minimizes the potential for "Change Orders"

Phase VI Overview

Task 1. Work Stream Kick-Off

Objectives

Ensure that expectations and process for the work stream are clear and agreed upon

The Contractor will develop kick-off session materials and facilitate session, finalize work stream milestone and key

deliverables timeline, and begin discovery activities. The State will ensure active participation from core project team and provide relevant documentation, identify key stakeholders and manage meeting logistics

Deliverables

- Kick-off session
- Work stream plan

Task 2. RFP Development

Objectives

Develop RFP documents to procure the technologies and services defined in the procurement strategy. Based on the procurement strategy, the State will determine how many RFPs are needed for this purpose. At the State's direction, the Contractor will develop up to three such documents.

The Contractor will develop documentation, review documentation with the State's core team, and refine documentation to incorporate feedback. The State will provide current State structure and content for standard terms and conditions.

Deliverables

- RFP outline
- Up to three RFP(s) accepted and approved by the State for issuance to the marketplace. Approval will not be unreasonably withheld.
- Evaluation framework
- Procurement library

Task 3. RFP Issuance

Objectives

Issue the RFP(s) to the marketplace

The Contractor will (1) support the State in responding to Federal comments, (2) train evaluators, and (3) support the vendors' conference. The State will address Federal comments, lead vendors' conference, and organize and attend evaluator training.

Deliverables

- Evaluator tools
- Evaluator training
- Material to support responding to Federal comments, and vendor conference

Task 4. Vendor Selection

Objectives

Select the highest value proposal for the State

The Contractor will support the procurement evaluation team in the proposal evaluation process as follows:

- Facilitate the evaluation of the technical proposals to establish a shortlist
- Develop shortlist vendor interview/orals questions and agenda
- Facilitate shortlist vendor orals process and debriefing, and document results
- Provide counsel to the State through BAFO and contract negotiations
- Prepare procurement final report

The State will evaluate the proposals and make a recommendation as to the highest value vendor proposal as follows:

- Evaluate technical proposals to establish a shortlist using the evaluation framework

- Conduct shortlist vendor interviews or orals
- Conduct BAFO process and contract negotiations

Deliverables:

- Proposal evaluation summary
- Vendor interview debriefing notes
- Final Procurement Report

Phase VII. Quality Assurance Oversight Role

Provide a methodology for quality assurance oversight assessments of vendors' work efforts. The methodology will be based on defining milestones for key deliverables and processes, and will be appropriate for use with vendors already engaged in projects related to the State's health care reform initiatives and with vendors the State may secure during Gartner's engagement. The Quality Assurance (QA) approach and methodology will focus on:

- **Setup and Launch QA Office**—Prior to the final selection of the vendor, establish the infrastructure to perform quality assurance oversight
- **Oversight and Monitoring of Vendor Project Setup and Launch** – Providing on-site oversight and monitoring of the establishment of the vendor project management office, processes and startup deliverables—system requirements and general system design— including:
 - Identifying and raising issues and risks with the proposed approach.
 - Refining and enhancing the process for deliverable reviews.
 - Validating vendor methodology and project processes.
 - Providing deliverable inspection reports
- **Requirements and Design Validation**—Based upon the functional and non-functional requirements established by the State as a starting point, ensure vendor's fidelity to the State's requirements and the final contract—including:
 - Validating requirements and change management processes for business and system requirements used to develop the next generation system.
 - System design and architecture requirements
 - Providing deliverable inspection reports
- **Project and Deliverable Reviews**—Conduct reviews of key deliverables—including:
 - Confirming standards and acceptance criteria for all deliverables to be delivered by the vendor
 - Assessing software development activities against industry standards such as Information Technology Infrastructure Library (ITIL) and Center for Medicare and Medicaid Innovation (CMMI) and providing reports of these assessments with actionable recommendations
 - Escalating risks and issues with recommended risk mitigation and avoidance plans;
 - Providing deliverable inspection reports

Objectives

Quality assurance oversight assessments of the vendors' work efforts focusing on:

- Confirming that the software and components meet the State's needs
- Confirming that the system is well engineered and meets all requirements
- Preventing, detecting, and mitigating project risks

Provide a regular review and recommendations regarding project status and risk anticipation, prevention and mitigation through:

- Reviewing project planning deliverables to ensure they are sufficient and meet applicable project standards

- Reviewing ongoing project processes, methods and activities
- Technical review and verification of key project milestones and deliverables
- Independent review of project deliverables against requirements
- Anticipation and identification of project risks
- Monitoring the project risk management process
- Providing periodic review and recommendations to the Project Director regarding project status and risk anticipation, prevention and mitigation

Task 1. Work Stream Kick-Off

Objectives

Ensure that expectations and process for the work stream are clear and agreed upon.

The Contractor will develop kick-off session materials and facilitate session, refine and finalize work stream milestone and key deliverables timeline based on feedback from the session, and begin discovery activities. The State will ensure active participation from core project team, and provide relevant documentation, identify key stakeholders and manage meeting logistics.

Deliverables

- Kick-off session
- Work stream milestone and key deliverables timeline

Task 2. Establish QA Office

Objectives

Establish an efficient structure and process for quality assurance oversight assessments.

The Contractor will develop and document organizational and reporting structure for the QA Office. The State will ensure active participation from core project team, and provide relevant documentation, identify key stakeholders and manage meeting logistics

Deliverable

- Organizational and reporting structure for the QA Office

Task 3. Vendor Setup and Launch Oversight

Objectives

Conduct initial baseline review.

The Contractor will review and provide findings and recommendations regarding overall QA process and roles and responsibilities. Subject to State approval of the Contractor's findings and recommendations regarding overall QA, the Contractor will conduct initial vendor review, develop baseline Health Check and present vendor quality assurance findings and recommendations to the State's core team. The Contractor will not conduct the initial vendor review until the State has reviewed and approved the Contractor's findings and recommendations with regard to overall QA process and roles and responsibilities. The State will facilitate engagement with vendors, participate in initial baseline health check and review baseline assessment and all findings and recommendations.

Deliverables

- QA charter and rules of engagement
- State-approved findings and recommendations regarding QA process, roles and responsibilities.

Approval will not be unreasonably withheld.

- Initial review of vendor plan
- Baseline project health check
- Vendor QA findings and recommendations,
- Initial QA assessment and tracking reports

Task 4. Requirements and Design Validation

Objectives

Conduct major milestone review of vendor requirements and design validation process

The Contractor will develop and publish criteria and methodology, refine criteria and methodology based on State, conduct QA assessments, and develop and present QA reports to the State. The State will review and provide feedback on QA methodology and criteria and review QA assessments reports.

Deliverables

- QA criteria and methodology
- QA reports on the vendor
 - Requirement validation plan and process
 - System design plan and process
 - Requirements validation deliverables and system design deliverables

Task 5. Project Deliverables and Status Reviews

Objectives

Conduct ongoing major milestone reviews of key deliverables and outcomes.

For this objective the Contractor will conduct quarterly, milestone-based, and ongoing proactive reviews, develop findings reports and recommendations for each interaction and review and prepare and provide weekly and monthly project status reports. The State will participate in review process, meet with Gartner to review the findings and assessment reports and provide direction as necessary for specific areas to be addressed.

Deliverables

- Quarterly, milestone-based, and ongoing QA Oversight findings and recommendations reports
- Weekly and monthly project status reports

1.2 Gartner Research

The Contractor will provide research components to support the key members of the State team through the life cycle of the Vermont Health Services Enterprise Project. This service is provided by the Contractor to the State on a fix fee priced basis during the entire term of this contract. Three components are included:

- **Executive Programs CIO Signature**—This Gartner Research program provides robust advisory capacity to better inform CIO's in the evaluation and selection of appropriate IT products and services, the management of IT in the public sector as well as the application of this knowledge to enhance the effectiveness and efficiency of outcomes for HHS initiatives and importantly for the Vermont Health Services Enterprise effort. The components and services provided include:
 - **Insight Generation**—Working with our dedicated CIO analysts within Executive Programs on IT Strategy, organization design, governance, and business value of IT
 - **Peer Connections**—Reaching out to other CIOs with introductions made by Gartner's two relevant Centers of Excellence: State and Local Government, and Healthcare
 - **Team Development**—Building the business and IT acumen of leadership teams using Gartner's *CIO Reference Guide, Leadership Development Program, CIO Academy* and more
 - **Personal Coaching and Mentoring**—Providing guidance on the evolving role of the CIO and ways to

- navigate the political landscape
- **Gartner Symposium** - Attendance for two for our signature event—Gartner Symposium
- **Gartner for IT Leaders Advisor Workgroup** - Provided for identified team members. The State will identify 1 Advisor and 3 additional Role Users supporting the Vermont Health Services Enterprise Project up to the Office of the CIO for the State and to the leadership of the Agency of Human Services.

This Gartner Research program provides an expanded version of the standard Gartner for IT Leaders Advisor services and is expressly designed to enable the State team members to access Gartner resources in a workgroup environment and enables the team to have access to Gartner Research related to information technology and the functional responsibilities of their specific roles in the Health Services Enterprise Project. The components and services provided include:

- Role-Specific IT Research
- Benchmarking Analytics IT Key Metrics Data
- Diagnostic Tools, Templates, and Case Studies
- Selected Vendor Reports
- Analyst Inquiry Unlimited for the main member/Advisor
- Summit Event Ticket
- **Gartner for Technical Professionals**—Provides online access for the enterprise supporting the Vermont Health Services Enterprise Project up to the Office of the CIO for the State and to the leadership of the Agency of Human Services. This Gartner Research program will provide initiatives/projects in-depth technical research and guidance to assist the State advance the execution of their IT strategy. The Research Access provided through this component includes:
 - **Gartner for Technical Professional**—Covers application platforms, collaboration and content management, data center, data management, identity and privacy, network and telecom, and security and risk management
 - **Reference Architecture**—A decision-making framework and library of research that guides clients in selecting a technology architecture, Reference Architecture is available only in Gartner for Technical Professionals
 - **Initiatives**—A continuous flow of relevant Gartner Technical Professional information delivered when clients need it. Each initiative features a unique custom page and client-customized content. Enables a continual flow of relevant Gartner for Technical Professionals information to client’s customized Web page. Based on Client preferences, including initiative alerts highlighting when new content becomes available that is of interest to the end user

1.3 Project Schedule

The project schedule reflects parallel work efforts to expedite the project's efforts. Whenever possible, The Contractor will work with the State’s core Project Team to accelerate an activity or move a portion of the project’s activities forward ahead of schedule to deliver higher value and to develop “early wins”. Project Schedule included on next page:

Project Component/Task	Deliverable	Due Date
Project Initiation	Detailed Work Plan	Week 1
	Project Status, Issues and Risks Reporting Template and Schedule	Week 1
	Final Approved Master Project Work Plan	Week 2
Readiness Assessment	Readiness Assessment As-Is Findings	Week 3
	To-be Target State and Recommendations	Week 5
	Final Organizational Readiness Report, Findings and Recommendations	Week 6
Functional Requirements Validation	Final Functional Requirements Assessment	Week 5
	Functional Requirements Enhancement Recommendations and Road Map	Week 6
Non-Functional Requirements Validation	Final Non-Functional Requirements Assessment	Week 6
	Final Non-Functional Requirements and GSD Enhancement Road Map	Week 7
Alternatives Analysis (AA)	AA Final Report with Recommended Approach for: <ul style="list-style-type: none"> • Integrated Eligibility Including HIX • Building out the modular solution pattern for the Vermont Health Services Enterprise integrating the portfolio of components essential to support the vision for the Blueprint for Health 	Week 9
Procurement Strategy and Road Map	Final Procurement Strategy and Road Map	Week 10
Procurement Assistance	Technical RFP Narrative	Week 9
	Final Evaluation Framework and Evaluation Tools	Week 11
	Completion of Training of Proposal Evaluation Team	Week 13
	Agenda and Interview Questions for Shortlist Vendors’ Orals	Week 16
	Final Procurement Report	Week 22
Quality Assurance Oversight	QA Charter and Rules of Engagement	Week 20
	Final QA Criteria and Methodology	Week 22
	Baseline Project Health Check	Week 36
	Ongoing QA Deliverable Review Assessment Reports: <ul style="list-style-type: none"> • Vendor Master Project Work Plan • Requirements Validation Plan and Process • Requirements Validation Finalization • System Design and Plan • Software Development Life Cycle Deliverables • Build Process • Vendor QA Process • Systems and Integration Testing—Plans, Process and Results • User Acceptance Testing • Deployment Plan and Process • Training Plan and Process • Technical Knowledge Transfer 	Monthly as deliverables are completed and reviewed
	Quarterly Project Health Check Reports	Qtly starting Wk 48 and ending on Wk 74

1.4 Warranties

- (a) The express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.
- (b) Warranty of Law. Contractor represents and warrants that to the best of Contractor’s knowledge: (i)

there is no claim, litigation or proceeding pending or threatened against Contractor with respect to the Software or any component thereof alleging infringement of any patent or copyright or any trade secret or any proprietary right of any person; (ii) the Software complies in all material respects with applicable laws, rules and regulations; (iii) Contractor has full authority to enter into this Contract and to consummate the transactions contemplated hereby; and (iv) this Contract is not prohibited by any other contract to which Contractor is a party or by which it may be bound.

(c) Warranty of Title. Contractor further warrants that (i) it has good title to the Deliverables; (ii) it has the absolute right to license the Deliverables; (iii) as long as the State is not in material default hereunder, the State shall quietly and peacefully possess and use any of the Deliverables provided hereunder subject to and in accordance with the provisions of this Contract; and (iv) Contractor shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into the Deliverables ("Title Warranty"). Contractor agrees to assist the State in obtaining the requisite licenses for third party software necessary to use the Deliverables. This Title Warranty shall last perpetually. In the event of a breach of the Title Warranty, Contractor shall indemnify, defend and hold harmless the State from and against any and all harm, injury, damages, costs, losses, liabilities, settlement amounts and expenses, including reasonable attorneys' fees and expenses, incurred by the State arising out of said breach.

(d) Service Warranties. Contractor warrants and represents that each of its employees, independent contractors or agents assigned to perform services hereunder shall have training, background and skills reasonably commensurate with the level of performance reasonably expected for the tasks to which he or she is assigned.

(e) Virus Protection. Contractor warrants and represents that any time the deliverables are delivered to the State, whether delivered via electronic media or the internet, no portion of the Deliverables 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.

Trade Secret, Patent, and Copyright Infringement. Notwithstanding anything to the contrary in this Agreement, the State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.

Publicity. Neither Party shall use the name of the other Party in any announcements, press releases or advertisements, or for any commercial purpose, without the prior written consent of the other, except that Contractor may name Client in client listings.

**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 services specified in Attachment A, for services actually performed, 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 maximum amount payable under this contract for service and expenses shall not exceed and shall be subdivided based on the submitted deliverables specified in Attachment A, and as approved within the monthly Statement of Work revisions.
2. As follows, according to the invoicing schedule below, payment for final deliverables will not be issued until a deliverable has been reviewed and accepted by State, and upon submission of an invoice.

Project Component/Task	Deliverable	Projected Milestone Date	Milestone Payment Amount
Project Initiation	Project Status, Issues and Risks Reporting Template and Schedule	Week 1	\$ 15,000.00
	Final Approved Master Project Work Plan	Week 2	\$ 25,000.00
Readiness Assessment	Readiness Assessment As-Is Findings	Week 3	\$ 15,000.00
	To-be Target State and Recommendations	Week 5	\$ 30,000.00
	Final Organizational Readiness Report, Findings & Recommendations	Week 6	\$ 105,000.00
Functional Requirements Validation	Final Functional Requirements Assessment	Week 5	\$ 65,000.00
	Functional Requirements Enhancement Recommendations and Road Map	Week 6	\$ 65,000.00
Non-Functional Requirements Validation	Final Non-Functional Requirements Assessment	Week 6	\$ 81,000.00
	Final Non-Functional Requirements Enhancement Road Map	Week 7	\$ 81,000.00
Alternatives Analysis (AA)	AA Final Report	Week 9	\$ 120,000.00
Procurement Strategy & Road Map	Final Procurement Strategy and Road Map	Week 10	\$ 130,000.00
Procurement Assistance	Technical RFP Narrative	Week 9	\$ 350,000.00
	Final Evaluation Framework and Evaluation Tools	Week 11	\$ 45,000.00
	Completion of Training of Proposal Evaluation Team	Week 13	\$ 30,000.00
	Agenda and Interview Questions for Shortlist Vendors’ Orals	Week 16	\$ 15,000.00
	Final Procurement Report	Week 22	\$ 10,000.00
Quality Assurance Oversight	QA Charter and Rules of Engagement	Week 20	\$ 41,250.00
	Final QA Criteria and Methodology	Week 22	\$ 41,250.00
	Baseline Project Health Check	Week 36	\$ 115,000.00
	QA Deliverable Review Assessment Reports (Fixed Price for All Deliverables from RFP(s) Selected Vendors—Cost Per Deliverable will Be Defined within this Fixed Price at Initiation of the QA Work Stream)	Monthly as deliverables are completed & reviewed	\$ 550,000.00
	Quarterly Project Health Check Reports (One Baseline and Three Quarterly Health Checks During QA 18 Month Work Stream)	Quarterly starting Week 48	\$ 460,000.00
Gartner Research	Executive Programs CIO Signature	Week 1	\$ 82,700.00
	IT Leaders Advisory Workgroup	Week 1	\$ 50,900.00
	Gartner for Technical Professionals	Week 1	\$ 31,400.00
Total Cost			\$2,554,500

Note: These dollars associated in the tables above are total not to exceed figures. Any deviations from the amounts and dates stated in the table above will be reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor by way of amendment to this contract.

3. All identified fees included in this Contract are all inclusive, no benefits or insurance or other expenses will be reimbursed by the State. The set rates also include any indirect rate that covers the administrative expenses, occupancy fees, utilities, repair and maintenance of equipment, office maintenance, audit and legal fees, insurance, travel, telephone, postage, supplies, etc. The State does not guarantee the assignment of any minimum number of hours or other work under this contract.
4. Payments for subcontractors are the responsibility of the Contractor and will be made upon approval (See Attachment C, #15) as per the deliverables schedule above. The State shall not be responsible for separate expenses of the Contractor's sub-Contractors.
5. The Contractor will submit an invoice on a monthly basis to the State for services provided under this contract #22013 during the previous month. Each invoice must include a unique invoice number, the contract number, dates of service, and itemized billing for successfully completed deliverables. Invoice amounts for deliverables must be pre-approved by the State prior to submission. The State reserves the right to withhold part or all of the contract funds if the State does not receive timely documentation of the successful completion of contract deliverables. All invoices must be preapproved by, and submitted to:

Hunt Blair, Deputy Commissioner
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 054953

4. State will remit all paper payments to:

Gartner Inc.
P.O. Box 911319
Dallas, TX 75391-1319

**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 \$ N/A per occurrence, and \$ N/A 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, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

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

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

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single

audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: <http://finance.vermont.gov/forms>

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

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 his 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.

ATTACHMENT D

MODIFICATION OF CUSTOMARY PROVISIONS OF ATTACHMENT C OR ATTACHMENT F

1. Requirements of Sections in Attachment C are hereby modified:

Paragraph 6 in Attachment C is replaced in full as follows:

I. Defense and Indemnification

- (a) The Party will act in an independent capacity and not as officers or employees of the State.
- (b) The Party shall indemnify the State and its officers and employees from any 3rd party claims liability, losses costs or expenses (including reasonable attorney's fees and court costs) relating to any claim of Intellectual Property (IP) infringement involving a contract Deliverable or Service provided by the Party and for bodily injury or death to any person or damage to any real or tangible personal property proximately caused by or arising out of the negligent acts or omissions and/or willful misconduct of the Party.
- (c) 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 contract. The obligations set forth above shall survive the expiration or termination of this Contract.
- (d) Both Parties assume the risks of their own actions and inactions under this contract, with each reserving its right to seek compensation for the negligent or wrongful acts or omissions of the other.

II. Liability

- (a) Limitation of Liability - Neither party shall be liable for any consequential, indirect, special or incidental damages suffered by either party, such as damages for lost profits, business failure or loss arising out of use of the Deliverables or the Services, whether or not advised of the possibility of such damages. Except for liability associated with Party's obligation to indemnify the State identified in article I(b) above the Party's total liability arising out of this Agreement shall be limited to **three times (3X)** the fees paid by the State to the Party under this Agreement. There is no limitation to claims made by any third party imposed by any provisions of this contract.
- (b) No 3rd Party Beneficiaries - This Agreement is for the benefit of the parties only. None of the provisions of this Agreement are for the benefit of, or enforceable by, any third party. It is the intention of the State and the Parry that no third party shall have the contractual right to seek to impose liability on either Party as a result of the Services or any Deliverables furnished to the State.

2. Requirements of Sections in Attachment F are hereby modified:

Paragraph 7 in Attachment F is modified by inserting the following:

Confidential information of the Contractor and of the State.

- (a) Neither the Contractor nor the State will disclose information for which a reasonable claim of exemption can be made, including, but not limited to, trade secrets and confidential information that is exempt from public disclosure by the State of Vermont pursuant to 1 VSA § 317(c), subject to the following terms and conditions:

The term “confidential information” means information, whether presented orally or in writing, and whether or not marked as “confidential” or “proprietary,” which could provide a competitive advantage to the party possessing such information and which either embodies trade secrets or is confidential technical, business, or financial information, provided that such information:

- i. is not generally known, or is not available from other sources without obligations concerning its confidentiality;
- ii. has not been made available by the owners to others without obligations concerning its confidentiality;
- iii. is not already available to the public without obligations concerning its confidentiality; or,
- iv. has not been developed independently by persons who have had no access to the information.

Each party agrees to use the confidential information received from the other party only for the purposes of and in accordance with this Contract. The receiving party shall promptly notify the disclosing party of any request or demand by any court, governmental agency or other person asserting a demand or request for confidential information of the disclosing party supplied pursuant to this Contract, so that the disclosing party may seek an appropriate protective order. The Contractor acknowledges that the State is subject to the terms of the Vermont Access to Public Records Law, 1 VSA 315 et seq, and the Contractor agrees that it will not make any claim against the State if the State makes available to the public any information it receives from the Contractor in response to a binding order from a court or governmental body or agency compelling its production.

- (b) Contractor agrees to keep confidential all information received and collected by Contractor in connection with this contract (“State Data”) unless otherwise instructed by the State. The Contractor agrees not to publish, reproduce, or otherwise divulge any such 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 those employees on his/her staff who must have the information on a “need to know” basis. With respect to the State Data it receives, maintains and/or transmits, in electronic media or in any other form or medium, Contractor shall, in good faith, exercise due diligence using generally accepted commercial business practices for information technology security, to ensure that systems are operated and maintained in a secure manner, and that management, operational and technical controls will be employed to ensure security of systems and data. The Contractor shall:

- i. Implement administrative, physical and technical safeguards that protect the confidentiality, integrity and availability of State Data;
- ii. Protect against any reasonably anticipated threats or hazards to the security or integrity of State Data;
- iii. Ensure that any agent to whom Contractor provides State Data agrees to implement reasonable and appropriate safeguards to protect such records; and

iv. Within the most expedient time possible, but in not more than twenty-four (24) hours, report to the State any unauthorized acquisition or access of computerized data that compromises the security, confidentiality or integrity of State Data (a "security breach"), caused or contributed to by the Contractor or its agents once the Contractor has determined that a breach has occurred. A "security breach" may include compromise by malware, search engine web crawler, password compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures. Contractor shall make reasonable efforts to promptly cure such breach, and if cure of the breach is infeasible, Contractor shall immediately notify the State.

Contractor, within one day of discovery, shall report to the State any security breach. 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 Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the State.

Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information, including, but not limited to Chapter 62 of Title 9 of the Vermont Statutes or other event requiring notification. In the event of a breach of any of Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law.

Paragraph 10 in Attachment F, entitled Intellectual Property/Work Product Ownership, is replaced in full as follows:

Contractor shall grant ownership to the State of Deliverables originally created and presented to State of Vermont under this Agreement.

- (a) The Contractor shall retain sole and exclusive ownership of the Contractor tools, methodologies, questionnaires, responses, and proprietary research and data previously owned and/or generated in the course of performing the Services, together with all intellectual property rights therein (the "Contractor Materials"). Contractor grants to State of Vermont a perpetual, non-exclusive, royalty-free license to use the Contractor Materials embodied in the Deliverables, subject to the limitations set forth in (e).
- (b) Nothing contained in this Agreement shall preclude Contractor from rendering services to others or developing work products that are competitive with, or functionally comparable to, the Services. Contractor shall not be restricted in its use of ideas, concepts, know-how, data and techniques acquired or learned in the course of performing the Services, provided that Contractor shall not use or disclose any of State of Vermont's confidential information. Notwithstanding the foregoing, the Contractor shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State.
- (c) With respect to any benchmarking Services performed by Contractor, State of Vermont acknowledges that (i) the contents of the Benchmarking Report (as defined in the Statement of Work) and other deliverables are based upon information which is proprietary to Contractor and contained in Contractor's proprietary database, (ii) the contents of the database belong to Contractor solely, (iii) State of Vermont's data will become part of the database, (iv) Contractor will code any presentation of Client's data to preserve Client's anonymity, and (v) the database will be used by Contractor in future consulting and benchmarking engagements. Identification

- of client data and other measures to protect client confidentiality will be conducted in accordance with Attachment E of this agreement.
- (d) State of Vermont shall retain its rights in any proprietary material that it supplies to Contractor. If State of Vermont provides Contractor with materials owned or controlled by the State or with use of, or access to, such materials, the State grants to Contractor all rights and licenses that are necessary for Contractor to fulfill its obligations under this Agreement.
 - (e) Subject to payment in full of the applicable fees, Contractor grants to the State of Vermont for internal purposes only a worldwide, royalty-free, perpetual license to use, reproduce, display, distribute copies of, and prepare derivative works of the Deliverables. Unless the Deliverable is a Request for Proposal (RFP) or similar document intended to be distributed by the State, State shall not make the Deliverables available, in whole or in part, to anyone outside of the State government or quote excerpts from the Deliverables to the public, without the prior written consent of Contractor. For purposes of this Agreement, the Green Mountain Care Board is part of State government. Notwithstanding the foregoing, State may share the Deliverables with (i) its outside auditors and/or accountants, (ii) third parties who are engaged to review or implement suggestions or to further research the issues contained in the Deliverables, and (iii) governmental or regulatory bodies as required by law to include applicable FOIA statutes.

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 **Gartner Consulting** (“Business Associate”) as of **May 15, 2012** (“Effective Date”). This Agreement supplements and is made a part of the Contract to which it is an attachment.

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.

The parties agree as follows:

1. **Definitions.** All capitalized terms in this Agreement have the meanings identified in this Agreement, 45 CFR Part 160, or 45 CFR Part 164.

The term “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.

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

The term “Breach” means the acquisition, access, use or disclosure of protected health information (PHI) in a manner not permitted under the HIPAA Privacy Rule, 45 CFR part 164, subpart E, which compromises the security or privacy of the PHI. “Compromises the security or privacy of the PHI” means poses a significant risk of financial, reputational or other harm to the individual.

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

2.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying contract with Covered Entity. 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.

2.2 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 (including subcontractors) in accordance with Sections 8 and 16 or (b) as otherwise permitted by Section 3.

3. **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 (a) 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 (b) the person notifies Business Associate, within three business days (who in turn will notify Covered Entity within three business days after receiving notice of a Breach as specified in Section 5.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in this Section must be of the minimum amount of PHI necessary to accomplish such purposes.

4. **Safeguards.** Business Associate 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 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 shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

5. **Documenting and Reporting Breaches.**

5.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI as soon as it (or any of its employees or agents) become aware of any such Breach, and in no case later than three (3) 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.

5.2 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.

5.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce does not pose a significant risk of harm to the affected individuals, it shall document its assessment of risk. Such assessment shall include: 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 risk of harm. When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity.

6. **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.

7. **Providing Notice of Breaches.**

7.1 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 individuals whose PHI was 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.

- 7.2 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.
- 7.3 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).
- 7.4 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.
8. **Agreements by Third Parties.** Business Associate shall ensure that any agent (including a subcontractor) to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity agrees in a written agreement to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. For example, the written contract must include those restrictions and conditions set forth in Section 14. Business Associate must enter into the written agreement before any use or disclosure of PHI by 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 written agreement to Covered Entity upon request. Business Associate may not make any disclosure of PHI to any agent without the prior written consent of Covered Entity.
9. **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.
10. **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.
11. **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.
12. **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.

13. Termination.

13.1 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 17.7.

13.2 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 this Contract without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate this Contract 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 this Contract, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

14. Return/Destruction of PHI.

14.1 Business Associate in connection with the expiration or termination of this Contract shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this Contract 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.

14.2 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.

15. 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.

16. 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.

16.1 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.

- 16.2 Business Associate shall ensure that any agent (including a 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. 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 without the prior written consent of Covered Entity.
- 16.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an agent, including a 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 three (3) 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.
- 16.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

17. Miscellaneous.

- 17.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract, the terms of this Agreement shall govern with respect to its subject matter. Otherwise the terms of the Contract continue in effect.
- 17.2 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.
- 17.3 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.
- 17.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule) in construing the meaning and effect of this Agreement.
- 17.5 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.
- 17.6 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 under this Contract 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.

17.7 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: 1/31/11)

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.

ATTACHMENT G:
TECHNICAL REFERENCE, RESEARCH AND ADVISORY SERVICES

The following terms shall apply to technical reference, research and advisory services to be provided by the Contractor to the State as described in Section 1.2 of Attachment A, except to the extent that they conflict with any other provision of this Agreement.

Utilization Terms Applicable Technical Reference, Research and Advisory Services

1. **Ownership of the Services.** STATE acknowledges that the Services are owned by Gartner or its licensors and are protected by copyright and other applicable laws. Gartner reserves all rights to the Services not expressly granted to State under this Agreement.
2. **User** is the individually named user who is licensed to use the Services. STATE represents that it will limit access to the Services to the agreed upon number of Users. STATE may substitute a User without Gartner's prior approval if: (1) a User leaves STATE's employ, or (2) a User's job function has substantially changed, so that the User's access to the Services is no longer deemed necessary by State. If STATE wishes to substitute a User for any other reason, State must obtain Gartner's prior written approval to do so, which approval, if requested on an occasional and limited basis, will not be unreasonably withheld.
3. **Access to the Services.** The Service Agreement shall set forth how many named individuals (each a "User") will have access to the Services. STATE is responsible for each User's compliance with this Agreement and applicable Service Agreement. STATE shall establish and enforce appropriate security measures to limit access to the Services to authorized Users. STATE shall not use the Services in any manner which violates this Agreement or any applicable laws.
4. **Use of the Services.** (a) **Internal Use.** Users may (i) print one copy of individual research documents for their personal use, for the benefit of STATE; (ii) make limited copies and/or excerpts from individual research documents for *internal* presentations or reports to be shared with other STATE personnel; and (iii) circulate copies of the Services, electronic or otherwise, to other Users.
(b) **External Use.** Users may not reproduce or distribute the Services *externally* without Gartner's prior written permission, except STATE may externally use an individual research document in its entirety if it purchases a reprint for the individual document. STATE may excerpt from the Services only if STATE obtains the prior written approval of Gartner Vendor Relations, at quote.requests@gartner.com. Any approved external use of the Services must comply with Gartner's *Copyrighted Materials — Usage and Quote Policy* which may be viewed on Gartner Vendor Relations section of gartner.com. Services may not be stored by State on any information storage and retrieval system.
5. **Monitoring/Audit.** STATE acknowledges and agrees to inform all Users that Gartner may monitor activity on its Web site, including access to and use of the Services by individuals. Upon request, State agrees to provide Gartner with an assurance from a responsible Contract Official (or other relevant evidence) of compliance with these usage terms.
6. **Warranties and Warranty Disclaimer.** (a) **Non-Infringement Warranty.** Gartner warrants that the Services, in the form provided by Gartner, will not violate or infringe upon the intellectual property rights of any third party. (b) **DISCLAIMER OF ALL OTHER WARRANTIES.** GARTNER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES AS TO ACCURACY, COMPLETENESS OR ADEQUACY OF INFORMATION. ALL SERVICES SPEAK AS OF THE PUBLICATION DATE AND GARTNER HAS NO OBLIGATION TO ADVISE STATE OF ANY CHANGE IN THE INFORMATION OR VIEWS CONTAINED IN THE SERVICES. THE SERVICES ARE INTENDED SOLELY AS A RESEARCH TOOL AND ARE NOT MEANT AS SPECIFIC GUIDES TO ACTION.

Appendix I – DVHA, DHR High Level Business Architecture Schematic

