

1. Parties. This is a contract for administrative services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Benaissance, LLC - A WEX Company, with a principal place of business in Omaha, Nebraska (hereafter called "Contractor"). The Contractor's form of business organization is a Limited Liability Corporation. The Contractor's local address is 11808 Grant Street, #200, Omaha, Nebraska 68164. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter

The subject matter of this contract is Services generally on the subject of development of premium processing for Medicaid and Payment Card Industry (PCI) compliance Services. 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 \$2,773,750.00.

4. Contract Term

The period of Contractors performance shall begin on April 1, 2016 and end on March 31, 2017(the "Term").

5. Prior Approvals

If approval by the Attorney General's Office, Secretary of Administration, DII CIO/Commissioner, or Chief Marketing Officer is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by such persons.

- Approval by the Attorney General's Office is is not required.
- Approval by the Secretary of Administration is is not required.
- Approval by the CIO/Commissioner of DII is is not required.
- Approval by the CMO/Marketing Services is is not required.

6. Amendment

This contract represents the entire agreement between the parties; 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 the State by giving written notice at least 30 days in advance and by the contractor by giving written notice at least 180 days in advance.

8. Attachments

This contract consists of 61 pages including the following attachments which are incorporated herein:

- Attachment A – Specifications of Work to be performed
- Attachment B – Payment Provisions
- Attachment C – “Standard State Provisions for Contracts and Grants” a preprinted form (revision date September 1, 2015)
- Attachment D - Other Terms and Conditions
- AHS Attachment E: Business Partner Agreement
- AHS Attachment F: Agency of Human Services’ Customary Contract Provisions
- Attachment G: Certificate of Acceptance
- Attachment H: Final Acceptance

9. Order of Precedence

Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:

- 1) Standard Contract
- 2) Attachment D (Other Terms and Conditions)
- 3) Attachment C (Standard Contract Provisions for Contracts and Grants)
- 4) AHS Attachment E: Business Partner Agreement (If Applicable)
- 5) AHS Attachment F: Agency of Human Services’ Customary Contract Provisions (If Applicable)
- 6) Attachment A with Exhibits
- 7) Attachment B
- 8) **List other attachments in order of precedence** (if applicable)

10. Contacts and Notices:

The contacts for this award are as follows:

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>	<u>For the Contractor</u>
Name:	Susan Whitney	Lisa Schilling	Mark Waterstraat
Phone #:	(802) 241-0258	(802)-241-0401	(402) 884-7021
E-mail:	susan.whitney@Vermont.gov	lisa.schilling@vermont.gov	mark.waterstraat@Benaissance.com

To the extent notices are made under this agreement, such notices shall only be effective if committed to writing and sent to the following persons as representatives of the parties:

CONTRACTOR:

Mark Waterstraat, EVP
11808 Grant Street, Suite 200
Omaha, NE 68164
Mark.Waterstraat@benaissance.com

STATE:

Howard Pallotta, General Counsel
Department of Vermont Health Access
NOB 1 South, 280 State Drive
Waterbury, VT 05671-1010

ahs.dvhalegal@vermont.gov

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

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

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

STEVEN COSTANTINO, COMMISSIONER DATE
NOB 1 South, 280 State Drive
Waterbury, VT 05671
Phone: 802-241-0239
Email: Steven.Costantino@vermont.gov

JOHN B. JENKINS, PRESIDENT DATE
11808 Grant St, Suite 200
Omaha, NE 68164
Phone: 402-884-7021
Email: John.Jenkins@benaissance.com

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

1. PURPOSE

This Contract sets forth the terms and conditions under which Contractor agrees to provide to the State certain improvements to the portal used for the Vermont Health Connect system and billing provided to State of Vermont Medicaid recipients services (the “Services”).

The Contractor shall provide the following;

Consumer Portal Deliverables: Payment Card Industry Compliance

1. Consumer Portal project Deliverables
 - a. The Contractor will provide functionality via access to the PCI compliant ExchangePoint Consumer Portal (“Pay Pages”) for use with the State Vermont Health Connect system (VHC) portal as described further in the Milestones below.
 - b. The Contractor will license the use of the Consumer Portal (“Pay Pages”) as part of its existing ExchangePoint license.
 - c. The Contractor will provide technical resources to answer questions and cooperate with the State Systems Integrator at such time the System Integrator is under contract with the State.
 - d. The Contractor shall provide Cascading Style Sheets (CSS) and style guides to support the set-up of the Pay Pages; the Pay Pages shall maintain the look and feel of the State portal as practicable.
 - e. The Contractor will cooperate with the State’s System Integration and User Acceptance testing.

Contractor shall ensure PCI compliance through integration with the Contractor’s Pay Pages and provide a currently dated Self-Assessment Questionnaire SAQ-C asserting compliance upon completion of the Pay Pages project to the Deputy CISO, State of Vermont Department of Information and Innovation (DII).

State Responsibilities:

- i. The State will contract with a System Integrator to code to the ExchangePoint Single Sign-On 2.0 Customer Guide which will be provided for the System Integrator’s review.
- ii. The State will require the System Integrator to work with the Contractor to establish connectivity needed in all environments
- iii. The State will provide content for the Consumer Portal (“Pay Pages”) in a timely manner so that the Contractor can load the content for integration testing.

Medicaid Milestones and Deliverables:

1. Initial month due – Milestone 1

The Contractor shall calculate a revised billing start date for Medicaid recipients.

- a. The Contractor will modify the billing start dates for Medicaid plans to begin billing at the first day of the next billing month after the approval month based on State Medicaid rules.
- b. The Contractor shall update the billing start date upon receipt of enrollment information from the State.

Currently, the billing start date for a customer begins with the application month, which can be several months prior to the approval month depending on processing timeframes. Traditionally, customers were allowed to pay for insurance from the month following the approval month going forward. If a customer wished, a customer could pay for and obtain coverage retroactive to the application month. The State has determined that the Contractor shall collect the insurance premium from the first of the month following the approval month going forward, and prior months, back to the application month, will be awarded at no cost.

2. Grace period tracking and billing – Milestone 1

The State will implement a 60-day grace period for any customer who does not pay his or her monthly premium by the due date. Under federal law, a customer cannot be terminated from Medicaid for non-payment of premium until they have failed to pay the premium for at least 60 days.

- a. The Contractor shall determine and track rolling grace periods for the Medicaid record only, and will provide electronic communication via an API (Application Programming Interface) call to the State indicating customers entering grace periods and exiting grace periods.
- b. The State shall send all notifications to the customer regarding the customer's grace period.

3. Split billing and split accounting – Milestone 2

The State has determined to implement split billing and split accounting to facilitate compliance with Medicaid rules. Customers shall be able to pay for only their Medicaid premiums if they choose to do so and will not be required to pay the full amount owed for all of their health care programs in order to be deemed current in their payments.

- a. The Contractor shall split the records sent from the State which include a Medicaid record and at least one of the following:
 - i. Qualified Health Plan (QHP)
 - ii. Dental plan
- b. The Contractor shall return values to the State in a single API call with adequate detail to present information in the State's Exchange UI (User Interface) regarding the single record in the State records.
- c. The State shall build and maintain the presentation layer within the State's existing or new Vermont Health Connect system (VHC) User Interface.

4. Terminations for non-payment after grace period expiration – Milestone 3

The Contractor shall notify the state to terminate a customer's Medicaid coverage when a customer has failed to pay their premium by the last day of the grace period.

- a. The Contractor will notify the State systematically when a customer's Medicaid should be terminated for non-payment via a State preferred methodology.
- b. The State shall confirm receipt of the notice via an API (Application Programming Interface) and communicate termination information to the affected customer as required by applicable law, regulation or rule.
- c. The State will be responsible for notifying customers of termination and plan closure.

5. Reinstatements – Milestone 3

The state needs to be able to reinstate a customer who was terminated for non-payment of a premium when their payment was postmarked on or before the last day of the grace period. The Contractor shall determine when a Customer's Medicaid should be reinstated and notify the State.

- a. The Contractor shall systematically notify the State when a customer's Medicaid should be reinstated for timely payment.
- b. The State System will confirm receipt of the notice and communicate reinstatement information to the affected customers as required by applicable law, regulation or rule.
- c. The State will be responsible for notifying customers of plan reinstatement.

6. 1st Subsequent invoice – Milestone 3

The Contractor shall include special text provided by the State to the first monthly bill that gets generated for the Customers who have not paid their initial bill by the time the monthly bills are generated. The text shall explain why the second invoice is being generated and what the customer must pay to enroll.

- a. The Contractor shall build logic into the subsequent invoice process to present State supplied text specific to members who have not satisfied their first month of Medicaid premium by the time the first subsequent invoice is created.

7. Exceptions - manual payment allocation – Milestone 3

The Contractor shall build an API in order to provide a more efficient way for State staff to systematically request that the Contractor move money from one program to another within a customer's account.

- a. The Contractor shall provide an API (Application Program Interface) call to allow for money to be moved from the QHP/Dental record to the Medicaid record of a member's split record and vice versa.
- b. State Requirements; The State will modify the customer service interface to allow a request for movement of funds to be sent electronically to Contractor.

8. Hardship refunds – Milestone 3

The contractor shall build functionality into its API (Application Program Interface) in order to provide a more efficient way for State staff to systematically request that the Contractor issue an expedited hardship refund to a customer.

- a. The Contractor shall provide functionality within its Application Program Interface (API) to allow State staff to request hardship refunds be processed on individual records.
- b. State Obligations:
 - i. The State will provide an interface for employees to request hardship refunds with security controls to permit only authorized personnel to access the refund functionality.
 - ii. The State Vermont Health Connect system (VHC) will enable a Member to request the refund from within the VHC User Interface (UI). The State and the Contractor have entered into a separate contract (#28670) dated July 1, 2015 pursuant to which Contractor shall process hardship refunds.

9. Medicaid Premium Notices – Milestone 4

Once split billing has been implemented by Contractor, as set forth herein, Contractor shall issue customers separate invoices for Medicaid containing Medicaid-specific information.

- a. The Contractor shall issue separate Premium invoices to customers on Medicaid Plans.
- b. The language for the Medicaid invoices shall be configurable and distinct from the QHP and Dental combined invoices.

10. Combined view of accounting/payment history across all programs – Milestone 4

The Contractor shall build an API (Application Program Interface) to allow State staff to be able to see within the State System, a customer's full billing/payment information as a combined view as well as broken down by program.

- a. The Contractor shall provide API (Application Program Interface) calls to retrieve data at the member level for all plan types.
- b. The State will create the UI (User Interface) views to propagate the returned data from the Contractor in a meaningful and easily understandable way for the customers on the VHC.

11. Cancellation of plan for non-payment – Milestone 4

The Contractor shall notify the state to cancel a customer's Medicaid eligibility when a customer has failed to pay their initial premium by the due date.

- a. The Contractor shall inform the State systematically of plans not paid which need to be cancelled.
- b. Assumptions:
 - i. The State will respond, via API, to affirm the cancellation suggestion.
 - ii. The State will communicate information regarding the cancellation to the relevant connected system.
 - iii. The State will be responsible for all noticing required for cancellation.

The project will be executed in Milestones as described below;

High Level Requirement - Medicaid Billing	Milestone
• Set Initial Month due to month after approval month	1
• Grace period tracking and billing (Includes grace period determination, rolling grace periods, etc)	1
• Split Accounting / Split Billing	2
• Termination (for on-going cases) after grace periods	3
• Reinstatements	3
• 1 st Subsequent invoice - Modified to Conditional Text Box	3
• Exceptions - manual payment allocation	3

• Hardship Refunds	3
• Medicaid Premium Notices	4
• Combined view of accounting/payment history across all programs	4
• Cancellation of plan for non-payment	4

The Contractor shall use an Agile methodology for development of each Milestone which shall be performed in one or more “Sprints.” At the beginning of each Sprint the Contractor will provide a list of items to be considered for the Sprint. The State shall provide test cases for consideration by the Contractor within 15 business days of the notification of development starting by the Contractor. Each Sprint will provide Deliverables associated with a Milestone. Upon completion of each Sprint the Contractor shall provide test reports to the State as part of each Milestone completion. If the State or the Contractor desires to move a Deliverable from one Milestone to another, the parties will follow the Change Order Process outlined in Section 8 below.

2. DEFINITIONS.

Capitalized terms used in this Contract not specifically defined in the text shall have the following meanings:

- (a) **“Application Programming Interface” or “API.”** A set of routines, protocols and tools used to build software applications which specifies how components should interact.
- (b) **“Certificate of Acceptance.”** Written certification, delivered to Contractor and signed by an authorized representative of the State, stating that any Defects in a particular Milestone or the Solution discovered after implementation and testing have been corrected as required under this Contract, and that the Milestone complies in all material respects with all of the applicable Requirements. The form of Certificate of Acceptance is attached as Attachment G to this Contract.
- (c) **“Contractor Intellectual Property” or “Contractor IP”** means all of the intellectual property utilized by Contractor in its efforts, including without limitation all patent applications, as well as any and all divisions, continuations, continuations in part, reissues, renewals, extensions, reexaminations, foreign counterpart applications and issued patents which relate to or claims the priority of same, including the right to file any and all such applications and receive letters patent thereon worldwide, including without limitation work done, independently or with other parties, and all other technology and intellectual property rights throughout the world of Contractor (including all derivatives thereof), including without limitation trade secrets, trademarks, trademark applications and registrations (together with all goodwill of the business symbolized by such trademarks and the portion of the business to which such trademarks pertain, domain names and copyrights. The State acquires no rights to Contractor IP except for the licensed interests granted under this Contract. The term **“Customization”** includes all other materials, reports, manuals, visual aids, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided or created by Contractor or its employees or contractors during the course of performing work for the State (excluding any State Data or

derivative works thereof and excluding any output from the VHC system generated by the State's use of the VHC system, including without limitation, reports, graphs, charts and modified State Data, but expressly including any form templates of such reports, graphs or charts by themselves that do not include the State Data).

- (d) **“Contractor Personnel”** means and refers to Contractor's employees and employees of Contractor's permitted subcontractors or permitted agents assigned by Contractor to perform Services under this Contract.
- (e) **“Customizations”** the Deliverables set forth in Attachment A, comprise customizations of Contractor's IP, as further described in Attachment D, Section 3.1.
- (f) **“Defect.”** Any failure by the Solution or any Phase or component thereof to conform in any material respect with applicable Requirements.
- (g) **“Defect Correction”** Either a modification or addition that, when made or added to the Solution, establishes material conformity of the Solution to the applicable Requirements, or a procedure or routine that, when observed in the regular operation of the Solution, eliminates the practical adverse effect on the State of such nonconformity.
- (h) **“Deliverables”** means the deliverables to be developed by Contractor in Connection with each Milestone, as described in Section 1 of this Attachment A and the documentation deliverables as described in section 6 of attachment A.
- (i) **“Documentation”** means any and all descriptions and specifications of the milestones included herein or created or developed hereunder, operational, functional and supervisory reference guides, manuals and instructive materials, in whatever form and regardless of the media on which it may be contained, stored or transmitted, which is developed, prepared, used or otherwise available from Contractor and/or Contractor's suppliers, in connection with and applicable to the provision, use, operation and support of the deliverables hereunder. Documentation shall be sufficient to enable State personnel to understand, operate, use, access, support, maintain, update and modify milestone functionality, notwithstanding that Contractor is or may be responsible for any or all of the foregoing obligations.
- (j) **“Equipment”** means all hardware and tangible equipment, including computers, information processing units, servers, network facilities, controllers, routers, modems, communications and telecommunications equipment (voice, data, audio and video), cables, storage devices and media, printers, terminals, peripherals, input, output and transmission devices, and other tangible fixtures, mechanical and electronic equipment, whether owned or leased by or for the benefit of Contractor or the State in connection with the Services or used by or for the benefit of Contractor to provide or support the provision of Services. Absent any specific reference to the contrary, the term “Equipment” shall refer to: (i) all or any portion of Equipment owned by the State (**“State Equipment”**); and (ii) Equipment leased, rented or otherwise contracted from a third party (**“Third Party Equipment”**); and/or (iii) Equipment that is owned or controlled by Contractor (**“Contractor Equipment”**).
- (k) **“Final Acceptance”** Final Acceptance shall mean that a written certification, delivered by

the State to the Contractor and signed by the State authorized representative, the Contract Manager, indicating that two monthly billing cycles have passed after production of all the deliverables in the contract, that all deliverables work together in the Vermont Health Connect System and all deliverables work without defect or the need for remediation.

- (l) **“Facilities”** means the physical premises, locations and operations owned or leased by the State (a “State Facility”) or the Contractor (a “Contractor Facility”), and from or through which the Contractor and/or its permitted contractors will provide any Services.
- (m) **“Go Live Date”** The date that the all or any part of the entire completed software code is first available for use by the State in an operational, non-test environment, utilizing actual production data.
- (n) **“Medicaid Record Only”** A record solely focused on Medicaid as opposed to a record that may include Medicaid plus a Qualified Health Plan and/or Dental plan information.
- (o) **“Qualified Health Plan”** An insurance plan that is certified by the Health Insurance Marketplace which provides certain health benefits.
- (p) **“Retainage”** A percentage of invoiced Milestones occurring during the period of performance of this contract to be paid in accordance with Attachment B.

“Services” shall mean the Contractor’s professional services delivered hereunder.

- (q) **“Software”** means the object code versions of applications programs, operating system software, licensing keys, network protocols and operating programs, computer software languages, utilities, other computer programs and related documentation, in whatever form or media, including the tangible media on which any of the foregoing are recorded, stored, transmitted and/or printed, together with all corrections, improvements, updates, derivative works, adaptations, versions, translations and releases thereof, which are used to provide or otherwise in support of the provision of the Services. Absent any specific reference to the contrary, the term “Software” shall refer to: (i) all or any portion of Software owned by the State (“**State Software**”); (ii) Software used under license from a third party (“**Third Party Software**”); and/or (iii) Software that is owned or for which Contractor has an exclusive license (“**Contractor Software**”). References to Software shall be deemed to include the Documentation for such Software unless otherwise specifically indicated.
- (r) **“User Interface”** Software allowing a member to navigate using menus or icon groups.

3. PROJECT MANAGEMENT

The scope of work as detailed above describes the Services, Deliverables and Milestones to be delivered hereunder. Contractor will develop an overall project schedule that details the tasks, timelines, and Deliverables.

4.1.1 KEY PROJECT STAFF

Contractor will perform and support the Services consistent with this Contract. Contractor Personnel will be properly educated, trained and qualified for the Services they are to perform and Contractor will put appropriate training in place to meet initial and ongoing training requirements of Contractor Personnel assigned to perform Services.

- (a) Contractor shall be responsible, at its own cost and expense, for any and all recruitment, hiring, Contractor-specific training, education and orientation for all Contractor Personnel assigned or to be assigned to perform Services and complete each Milestone.
- (b) All Contractor Personnel, in addition to any Contractor security policies and procedures, shall be required to comply with the security requirements in this Contract
- (c) Contractor shall conduct its hiring process in compliance with all applicable Federal and State laws to include, but not be limited to, anti-discrimination laws.
 - 1 (i) **Eligibility for Employment:** Contractor shall verify that all prospective employees are eligible for employment in the United States.
 - 2 (ii) **Criminal Records:** Contractor or an agent of Contractor shall perform criminal background checks on all prospective employees utilizing a national criminal database acceptable to the State. Before any Contractor Personnel begin work on the Services a) such background check shall have returned a “no record” result or, b) to the extent that the result revealed that a felony record or records exist for a given individual, the associated conviction(s) shall be unrelated to the work to be performed as specified under the Equal Employment Opportunities Commission’s EEOC Enforcement Guidance regarding the employment of convicted felons issued April 25, 2012. Contractor shall provide the State with notice of proposed Contractor Personnel with felony or misdemeanor convictions that involve a crime against a person; a crime involving the use or misuse of computer network; a crime involving weapons, explosives or arson; a crime involving trade secret/proprietary information; a crime involving theft, dishonesty, embezzlement, breach of fiduciary duty, identity theft, or other financial-related crimes; a felony conviction for drug possession; or a crime involving the distribution or trafficking of illegal drugs and/or controlled substances.
- 3
- (d) All Contractor Personnel providing or assigned to provide Services or otherwise in a position to obtain or have access to State Information, shall execute a non-disclosure agreement in a form acceptable to the State.
- (e) The timing for transfer, reassignment or replacement of Contractor Personnel will be coordinated with the project schedule for timing and other elements of the Services so as to maintain continuity in the performance of the Services and avoid interruption or disruption to the Services or any failures to maintain Service Levels.

Contractor shall assign the following Contractor staff (“Key Project Staff”), to perform the Services set forth in this Contract:

Named Resources:

Steve Cudly, Engagement Manager
Ron Svehla, Project Manager
Darryl Moore, Business Analyst

Contractor will cause the Contractor Personnel filling the Key Project Staff positions to devote full time and dedicated effort to the provision of the Services and the achievement of Service Levels required for the Services, unless a lesser allocation during certain Project Milestones may be agreed in writing.

4.1.2 KEY PROJECT STAFF CHANGES

Contractor shall not change the project assignment of Steve Cudly, Ron Svehla, and Darryl Moore for the period of project implementation. Contractor shall not change other members of Key Project Staff without providing the State written justification, a comprehensive transition plan and obtaining prior written approval of the State. State approvals for replacement of Key Project Staff will not be unreasonably withheld.

The replacement of Key Project Staff shall have comparable or greater skills and applied experience than being replaced and be subject to reference and background checks described above. If Contractor removes Key Project Staff for any reason without the State's approval, Contractor agrees to replace the new Key Project Staff member if performance is unacceptable to State and provide the first thirty (30) days of a replacement resource with equivalent skill at no charge.

If Contractor fails in any material respect to perform the Services and deliver the Milestones as set forth herein, and a root cause analysis determines that the failure was due in material part to an inadequate number of Contractor Personnel, then Contractor shall promptly assign appropriate personnel to address the inadequacy at no additional cost to the State.

In the event the State is paying for specific Services on a time and materials basis, and the State believes that Contractor is inefficiently utilizing any Resources or Contractor Personnel assigned to perform Services, the State may give Contractor a notice requesting a decrease in the number or reassignment of Contractor Personnel. Upon receipt of such notice, Contractor shall, within five (5) days from the State's notice, provide the State with a recommendation which Contractor reasonably considers will accomplish the requisite improvement.

Notwithstanding the foregoing, the State acknowledges that Key Project Staff may become unavailable due to termination of employment for any reason, through disability or death, illness, or through leave of absence such as FMLA or National Guard duty for example. In such circumstances, Contractor shall promptly notify the State in writing of the impending or actual departure of any Key Personnel and of the qualifications and identity of proposed replacement Key Project Staff. The State has the right to reasonably disapprove of any replacement Key Project Staff.

4.2 STATUS REPORTS

Contractor's Project Manager shall provide project documentation and collaboration to meet the State's vendor reporting requirements. If requested, the Contractor shall use the State's Status Report template. If no template is provided to the Contractor, the status information shall include, at a minimum: all planned tasks accomplished for the reporting period; planned tasks that are incomplete, or behind schedule in the previous week (with reasons given for those behind schedule); all tasks planned for the upcoming two weeks; an updated status of tasks (entered into the Master Project Work Plan and attached to the status report – e.g., percent completed, resources assigned to tasks, etc.); and the status of any corrective actions undertaken. The report will also contain items such as the current status of the project's technical progress and contractual obligations; achievements to date; risk management activities; unresolved issues; requirements to resolve unresolved issues; action items; problems; installation and maintenance results; and significant changes to Contractor's organization or method of operation, to the project management team, or to the deliverable schedule, where applicable. For all project Services performed on a time and materials basis, as provided herein, the Contractor shall also provide details on staff hours, cost per activity, all expenditures and a summary of Services performed for the reporting period.

The State Project Manager and Contractor's Project Manager will come to agreement on the exact format of the project documentation and collaboration reports, at or before the project kick-off meeting.

Each report shall include a project dashboard at the top outlining the overall status of the project in terms of the standard triple constraint: cost, time, resources (using a legend or icon of green, yellow, and red based upon the following definitions):

- Green – on track to deliver committed scope by committed deadline with committed resources/funding.
- Yellow – not on track to deliver committed scope by committed deadline with committed resources/funding, but have a plan to get back to green.
- Red – not on track and currently do not have a plan to get back to green. Need project management intervention or assistance.

In the event of yellow or red overall project status, there should be a specific task(s) and/or issue(s) identified as yellow or red which are the root cause of the overall project status being yellow or red. These items shall be presented in sufficient detail to determine the root-cause. The Status Report shall provide a link to the Risks and Issues Log for more detail.

The report shall include a budget section outlining original contract costs by deliverable with billed and paid-to-date information by deliverable and in total.

5.1 PROJECT MILESTONES

Contractor shall complete the Milestones set forth herein using system development and configuration control methodologies and the desirable sequence of project Payment Milestones as described herein and in the following table.

High Level Requirement - Medicaid Billing	Milestone
• Set Initial Month due to month after approval month	1
• Grace period tracking and billing (Includes grace period determination, rolling grace periods, etc.)	1
• Split Accounting / Split Billing	2
• Termination (for on-going cases) after grace periods	3
• Reinstatements	3
• 2nd initial bill - Modified to Conditional Text Box	3
• Exceptions – manual payment allocation - No override of Hierarchy, movement of money only	3
• Hardship Refunds	3
• Medicaid Premium Notices	4
• Combined view of accounting/payment history across all programs	4
• Cancellation	4

5.2 PAYMENT MILESTONES

If Contractor fails or has failed to meet a Payment Milestone, as defined in Attachment B, then, in addition to other rights and remedies provided to the State herein, including, without limitation, the right to terminate this Agreement, Contractor shall, at no additional cost to the State, provide the State with as many additional and appropriate Contractor personnel as may be required or necessary to meet the Payment Milestones, or, if Contractor has already failed to meet one or more Payment Milestones, complete the Payment Milestones within a readjusted time frame agreed upon by State and Contractor.

6.0 DOCUMENTATION DELIVERABLES REQUIRED FOR ACCEPTANCE.

In addition to the functional deliverables required in section 1 of this attachment A, at the end of each Milestone the Contractor will provide the following Documentation Deliverables to the State for review and acceptance. Documentation Deliverables from Contractor:

1. Current API Documentation
 - a. Documentation to include all API work completed to date for the State under this or any other contract between Contractor and the State and is to be shared with the System Integrator to support its work.
2. Test Reports – by Sprint
 - a. Test Reports are to include results of the test cases considered by the Contractor including those provided by the State.

3. Release Notes – by Sprint

- a. Release notes will provide a user based explanation of Deliverables included in the release as well as a mapping to the requirement resolved by the functionality delivered.

6.1 ACCEPTANCE TESTING BY THE STATE FOLLOWING IMPLEMENTATION

After Contractor provides written notice to the State that it has completed a Milestone, the State shall, in accordance with the Formal Acceptance Criteria agreed by the parties, and with full cooperation and assistance from Contractor, conduct all such inspections and tests of the Milestones as the State may deem necessary or appropriate to determine whether any Defects exist in the Milestone as implemented and whether the Milestone as implemented materially complies with all of the Formal Acceptance Criteria. Such inspections and tests shall be over a duration mutually agreed upon by the State and Contractor within limits of a minimum period of 5 business days and a maximum of 30 business days, per Milestone, from the date a notice of completion is issued (the “Acceptance Period”). Contractor shall correct all Defects during the Acceptance Period, demonstrate to the State that correction of such Defects has been made, and after so demonstrating correction, shall issue to the State a written Final Acceptance indicating that no Defects are known to exist in the Deliverable or Milestone. The State shall be deemed to have accepted and approved the particular Milestone only upon the State’s delivery to Contractor of a signed, written Certificate of Acceptance indicating that the Deliverable or Milestone, as the case may be, as completed, materially performs in accordance with the Formal Acceptance Criteria. The State shall make a good faith effort to respond with concerns or deliver a Certificate of Acceptance within thirty (30) days.

If at the end of the Acceptance Period, the State has not issued a signed Certificate of Acceptance to Contractor for that Deliverable or Milestone, the State may, in its sole discretion, extend the Acceptance Period; provided, however, that the State shall respond within five (5) business days of a written request by Contractor issued after the end of the original Acceptance Period to provide Contractor with the State’s status of approval or disapproval for that Deliverable or Milestone. Any rejection must be in writing and specify the reason for the rejection and must be based upon the continued existence of a Defect in the Deliverable or Milestone or failure of the Deliverable or Milestone to materially perform in accordance with the Formal Acceptance Criteria. The Certificate of Acceptance shall not be unreasonably withheld by the State. If a Certificate of Acceptance for a Deliverable or Milestone is signed and delivered by the State, Contractor shall sign said Certificate, with both parties receiving a copy thereof.

7. THIRD PARTY COOPERATION

The State may hire an independent, third-party “independent validation and verification” contractor to assist with auditing the Software and written Deliverables, including the Project Management Plan and Formal Acceptance Criteria. The State may hire other independent contractors as it may require to assist with the project. Contractor will cooperate with the State and the third party, including provision of: (i) written Documentation requested by the State; (ii) commercially reasonable assistance and support Services to such third party; and (iii) reasonable access to Contractor as necessary for such third parties to perform their work. The State shall use reasonable efforts to require such third parties to comply with Contractor’s reasonable requirements regarding confidentiality, operations, standards, and security.

8. CHANGE ORDER PROCESS

Any change to this Contract that alters one or more aspects of the project scope, schedule, Deliverable or Milestone, or cost, will require a formal Change Request and/or Contract amendment. While such changes may typically incur additional costs and possible delays some changes may result in less cost to the State (i.e.; the State decides we no longer need a deliverable in whole or part) or less effort on the part of the Contractor. The change order must define the effort involved in implementing the change, the total cost or associated savings to the State, of implementing the change, and the effect, if any, of implementing the change.

If a formal Change Request is necessary, the Project Manager for requesting party will prepare a Change Request in a form acceptable to the State detailing the impacts on scope, schedule, Deliverable or Milestone, resources, and cost. Once completed, the Change Request will be submitted to the non-requesting party for review. The non-requesting party will make its best efforts to either approve or deny the Change Request within ten (10) business days. In no event shall any delay in the approval or denial of a Change Request constitute a deemed approval by the State. Changes which require a material modification to project scope or Deliverable or Milestone, increases to the Contract Maximum Amount, an extension of the term or modifications to Attachment C or Attachment D shall require a Contract amendment. On a quarterly basis, all Change Orders shall be aggregated into a Contract amendment.

9. PERIOD OF PERFORMANCE

The period of initiation, planning, execution and close shall not exceed 12 months from the date of this Contract.

10. COOPERATION WITH SYSTEM INTEGRATOR CONTRACTOR

The parties agree that software development work contained in this contract is very important to the continued development of the Vermont Health Connect. The parties agree that while this work is very important, it is equally important that the software developed in this contract be integrated in the Vermont Health Connect. The contractor understands the importance of integration and agrees to cooperate closely with the State's system integrator during the duration of the project. The State requests that this cooperation start as soon as practicable, after the hiring of the System Integrator work. The State will notify the contractor of this hiring. The parties agree that cooperation and coordination as the software is developed by this contractor is of critical importance.

ATTACHMENT B

PAYMENT PROVISIONS

The maximum amount of this Contract shall not exceed \$2,773,750. This maximum amount is not intended under this Contract as any form of a guaranteed amount.

1. A certificate of insurance must be submitted prior to commencement of work and release of payments (Attachment C, Section 7).
2. Invoices must be rendered on Contractor's standard billhead or official letterhead. Contractor shall submit invoices in accordance with Section 6 of this Attachment B. Invoices shall be submitted to:

Susan Whitney
Susan.Whitney@Vermont.gov
(802) 241-0258
3. Payment terms shall be Net 30.
4. Contractor shall be paid based on documentation and itemization of work performed and included in invoicing as required by 32 VSA §463. Invoices shall reference this contract number, include date of submission, invoice number, and amount billed for each budget line and total amount billed. The State shall not be responsible for any expenses of the Contractor.
5. Payment Milestones- Contractor shall invoice the State only upon receipt of a Certificate of Acceptance for each Milestone based on the following rates or schedule:

High Level Requirement - Medicaid Billing	Medicaid Milestone
• Set Initial Month due to month after approval month	1
• Grace period tracking and billing (Includes grace period determination, rolling grace periods, etc)	1
• Split Accounting / Split Billing	2
• Termination (for on-going cases) after grace periods	3
• Reinstatements	3
• 2nd initial bill - Modified to Conditional Text Box	3
• Exceptions - manual payment reallocation - No override of Hierarchy, movement of money only	3
• Hardship Refunds	3
• Medicaid Premium Notices	4
• Combined view of accounting/payment history across all programs	4
• Cancellation	4

Payment Milestone	Gross Invoice Amount	Retainage 20%	Net Invoice	Invoice Sequence
Consumer Portal Implementation	\$ 200,000.00		\$ 200,000.00	1
Capacity Builder	\$ 500,000.00		\$ 500,000.00	2
Medicaid Milestone 1	\$ 525,000.00	\$ 105,000.00	\$ 420,000.00	3
Medicaid Milestone 2	\$ 525,000.00	\$ 105,000.00	\$ 420,000.00	4
Medicaid Milestone 3	\$ 525,000.00	\$ 105,000.00	\$ 420,000.00	5
Medicaid Milestone 4	\$ 498,750.00	\$ 99,750.00	\$ 399,000.00	6
Retainage	\$ -	\$ -	\$ 414,750.00	7
Totals	\$ 2,773,750.00	\$ 414,750.00	\$ 2,773,750.00	

6. Payment

- a. At the delivery of each Milestone listed above, the State will review the Deliverables completed and accepted by the State in each Milestone.
- b. Upon the delivery of a Certificate of Acceptance for each Milestone, the State will pay 80% of the gross invoice amount noted in the table above.
- c. After the code freeze from approximately October 1, 2016 to March 1, 2017, DVHA shall put into production the milestones delivered by Benaissance. Two monthly billing cycles after production, DVHA will determine if the delivered milestones work together to accomplish the tasks required by this contract or whether defects exist in the deliverables that require repair or remediation. After the Final Acceptance is issued in accordance with Attachment H, the State will pay the Contractor the Retainage.
- d. After the Final Acceptance is issued in accordance with Attachment H, the State will pay the Contractor the Retainage.

RETAINAGE:

The Contractor agrees to a 20% retainage from each Milestone payment. Retainage is to be released only after issuance of the Final Acceptance. Contractor must submit invoicing requesting release of the aggregate retained amount.

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party

within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

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

- 10. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
- 11. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the Services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.
- 12. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
- 13. Taxes Due to the State:**

 - a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing Services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
 - c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

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

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

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

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

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

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

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

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

20. Internal Controls: In the case that this Agreement is an award that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes,

regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

21. **Mandatory Disclosures:** In the case that this Agreement is an award funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.
22. **Conflict of Interest:** Party must disclose in writing any potential conflict of interest in accordance with Uniform Guidance §200.112, Bulletin 5 Section X and Bulletin 3.5 Section IV.B.

(End of Standard Provisions)

ATTACHMENT D

OTHER PROVISIONS

1. OWNERSHIP AND LICENSE IN DELIVERABLES

1.1 **Contractor Intellectual Property.** Contractor shall retain all right, title and interest in and to any Contractor IP.

(a) Except as set forth herein, the State acquires no rights or licenses, including without limitation intellectual property rights or licenses, to use Contractor IP for its own purposes. In no event shall the State claim a security interest or ownership interest on Contractor IP.

(b) Nothing in this Contract shall be construed to transfer, convey, restrict, impair or deprive Contractor of any of its ownership or proprietary rights or interest in any Contractor IP, work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements, computer processes, specifications, operating instructions, notes, and any other documentation (whether or not patentable) created by Contractor prior to, after or during the provision of the Services and the delivery of Deliverables or which has been independently developed by Contractor without use of or reference to any State Information (hereinafter, "Contractor Property"). Contractor retains all right, title and interest in and to Contractor IP and to Contractor Property. Except for the specific license relating to the receipt of Services granted to the State hereunder and ownership by the State of Customer Data, nothing shall or shall be construed as granting to the State and/or any third party any right or license under any of Contractor's present or future Contractor IP or Contractor Property, or as granting to the State and/or any third party any right or license to use for any purpose other than those purposes expressly stated herein, any Contractor IP or Contractor Property or any other Contractor resources or Contractor facilities or other Contractor proprietary items received, discovered or produced by Contractor in connection with the Services, nor shall anything in this Contract be construed to restrict, impair, transfer, license, convey or otherwise alter or deprive Contractor of any of its rights or proprietary interests therein, all of which are hereby expressly reserved.

(c) The State acknowledges that Contractor is a provider of commercial premium billing and payment processing Services enabled by Contractor's proprietary technology and has developed materials, processes and systems prior to entering into this Agreement. Contractor will continue to develop materials, processes and systems as Contractor provides Services to third parties and as Contractor provides the Services, and in addition to the Contractor IP, Contractor may own other patent, trade secret, copyright, trademark and other proprietary rights in techniques, brands, models, systems and concepts that were not paid for by the State (collectively, "Other Contractor IP"). Other Contractor IP and Contractor IP are proprietary to Contractor and shall remain Contractor's exclusive property. As Contractor provides the Services, the State will receive the benefit of Other IP and Contractor IP (in their current state and as each is improved or developed).

(d) The Deliverables and Milestones set forth in Attachment A comprise Customizations of Contractor's IP, the terms and conditions of ownership of and rights to use of the Customizations shall be governed by this Section.

(e) State agrees that Customizations shall remain the exclusive property of Contractor, and that Contractor shall retain all right, license, and interest thereto. However, consistent with this Section, Contractor agrees that once the Customizations have been fully paid for, Contractor shall grant State and the Centers for Medicare & Medicaid Services, an agency of the Department of Health and Human Services, a royalty-free, nonexclusive and irrevocable right to use the Customizations as part of the Services or to use them under contract with Contractor for similar Services for Federal purposes and to authorize others to do so. For the avoidance of doubt, the parties agree that Contractor is delivering proprietary software under 42 C.F.R. ¶ 495.360 (c). "Federal purposes" include the purpose of administering health insurance exchanges under the Affordable Care Act of 2010. Contractor is further subject to applicable regulations governing patents and inventions, including those issued by the Department of Commerce at 37 CFR Part 401.

1.2 State Intellectual Property; State Intellectual Property; User Name. The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, "State Intellectual Property").

As between the State and Contractor, the State shall be deemed to own all Customer Data, and Contractor shall at all times process the Customer Data in accordance with the terms of this Contract, and all applicable Laws.

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

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

2. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

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

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

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

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

2.2 Confidentiality of State Information. In performance of this Contract, and any exhibit or schedule hereunder, the Party acknowledges that certain State Data (as defined

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

Unless otherwise instructed by the State, Contractor agrees to keep confidential all information received and collected by Contractor in connection with this Contract (“State Data”). The Contractor agrees not to publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form or authorize or permit others to do so. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor’s possession to only those employees on its staff who must have the information on a “need to know” basis. The Contractor shall use State Data only for the purposes of and in accordance with this Contract. The Contractor shall provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

2.3 Security of State Information. The Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the

State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the Services against intrusion on a twenty-four (24) hour a day basis.

2.4 Back-Up Policies: The Contractor's back-up policies have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

2.5 Security Breaches; Security Breach Reporting. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor acknowledges that in the performance of its obligations under this Contract, it will be a "data collector" pursuant to Chapter 62 of Title 9 of the Vermont Statutes (9 V.S.A. §2430(3)). The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (including, as applicable, PII, PHI or ePHI) in any format or media, whether encrypted or unencrypted (for example, but not limited to: physical trespass on a secure facility; intrusion or hacking or other brute force attack on any State environment; loss or theft of a PC, laptop, desktop, tablet, smartphone, removable data storage device or other portable device; loss or theft of printed materials; or failure of security policies) (collectively, a "Security Breach"), the Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall analyze and document the incident and provide the required notices, as set forth below.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or in the case of a Security Breach by a data collector regulated by the Vermont Department of Financial Regulation ("DFR"), DFR, within fourteen (14) business days of the Contractor's discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor's subcontractors, affiliates or agents which may be "data collectors" hereunder. Except to the extent delayed upon request of law enforcement in accordance with 9 V.S.A. §2435(b)(4), within thirty days of the Security Breach or when the Contractor provides notice to consumers pursuant to this Contract, whichever is sooner, the Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the

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

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification. Further, the Contractor agrees to fully cooperate with the State, assume responsibility for such notice if the State determines it to be appropriate under the circumstances of any particular Security Breach, and assume all costs associated with a Security Breach, including but not limited to, notice, outside investigation and Services (including mailing, call center, forensics, counsel and/or crisis management), and/or credit monitoring, in the sole determination of the State.

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

3 SUBCONTRACTORS

Contractor shall be responsible for directing and supervising each of its subcontractors and any other person performing any of the Work under an agreement with Contractor. Contractor has provided to the State a list of all subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers. Contractor shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing any of the Services under an agreement with Contractor or any subcontractor.

4 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

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

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no pending litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.

- (iii) The Contractor will comply with all laws applicable to its performance of the Services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the Services and provision of the Deliverables as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the Deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

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

- (i) All Deliverables will be free from material errors and shall perform in accordance with the specifications therefor.
- (ii) Each and all of the Services shall be performed in a timely, diligent, professional and workpersonlike manner, in accordance with the highest professional or technical standards applicable to such Services, by qualified persons with the technical skills, training and experience to perform such Services in the planned environment. At its own expense and without limiting any other rights or remedies of the State hereunder, the Contractor shall re-perform any Services that the State has determined to be unsatisfactory in its reasonable discretion; the State shall have no obligation to pay for Services it has determined to be unsatisfactory.
- (iii) All Deliverables supplied by the Contractor to the State shall be transferred free and clear of any and all restrictions on the conditions of transfer, modification, licensing, sublicensing and free and clear of any and all liens, claims, mortgages, security interests, liabilities and encumbrances or any kind.
- (iv) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

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

4.6 Effect of Breach of Warranty. If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall provide at no additional cost of any kind to the State, the maintenance required.

5. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all Services performed under this Contract, with minimum third party coverage of \$1,000,000 per claim, \$3,000,000 aggregate; and (b) first party Breach Notification Coverage of not less than \$2,000,000.

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

With respect to the first party Breach Notification Coverage, Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

6. LIMITATION OF LIABILITY.

IN NO EVENT WILL THE CONTRACTOR'S LIABILITY FOR ANY DAMAGES TO THE STATE EVER EXCEED \$3,000,000. LIMITS OF LIABILITY FOR STATE CLAIMS WHICH MAY BE AGREED BY THE STATE SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT; OR (E) VIOLATIONS OF THE STATE OF VERMONT FRAUDULENT CLAIMS ACT. IN NO EVENT SHALL CONTRACTOR'S LIABILITY BE LIMITED FOR THIRD PARTY CLAIMS AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR'S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT.

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

The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement, and shall survive the expiration or termination of this Contract.

7. SOVEREIGN IMMUNITY

The Contractor acknowledges that the State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Contract.

8. DISPUTE RESOLUTION

- a. **Governing Law; Jurisdiction.** The Contractor agrees that this Contract shall be governed by and construed in accordance with the laws of the State of Vermont and that any action or proceeding brought by either the State or the Contractor in connection with this Contract shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Contractor irrevocably submits to the jurisdiction of such court in respect of any such action or proceeding. The State shall not be liable for attorneys' fees in any proceeding.
- b. **Contractor Default.** The Contractor shall be in default under this Contract if Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform the Services in conformance with the specifications and warranties provided in this Contract, or clearly manifests an intent not to perform future obligations under this Contract, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within thirty (30) days after delivery of the State's notice period, or such longer period as the State may specify in such notice.
- c. **State Default.** State shall be in default under this Contract if State commits any material breach or default of any covenant, warranty, or obligation under this Contract and State fails to cure such failure within thirty (30) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice.
- d. **Trial by Jury.** The Contractor acknowledges and agrees that public policy prohibits the State from agreeing to arbitration and/or from waiving any right to a trial by jury. Therefore, Contractor further acknowledges and agrees that, to the extent a Contractor Document expressly provides for arbitration or waiver of the State's right to a jury trial of the Contractor and/or other third parties by the State, such sections shall be waived and shall have no force and effect with respect to the State.
- e. **Trade Secret, Patent, and Copyright Infringement.** The State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.

- f. **Limits on Actions Prohibited.** The Contractor acknowledges and agrees that 12 V.S.A. § 465 renders null and void any contractual provision which limits the time in which an action may be brought under the contract, or waives the statute of limitations.
- g. **Continuity of Performance.** In the event of a dispute between the Contractor and the State, each party will continue to perform its obligations under this Contract during the resolution of such dispute unless and until this Contract is terminated in accordance with its terms.

9. REMEDIES FOR DEFAULT

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

10. ACCESS TO STATE DATA; RETURN OF PROPERTY

1. Access to State Data.

Within ten (10) business days of a request by State, the Contractor will make available to State a complete and secure (i.e. encrypted and appropriately authenticated) download file of State Intellectual Property and State Data in a format acceptable to State including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. *Provided, however*, in the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Intellectual Property and State Data to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Data.

2. Return of Property.

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

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

11. STATE FACILITIES

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

12. AUDIT

- a. **Audit Rights.** Contractor will maintain and cause its permitted contractors to maintain a complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. Contractor will provide to the State, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor personnel and to any and all Contractor facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Contractor and/or Contractor personnel and/or any or all of the records, data and information applicable to this Contract. At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor (or such higher or more rigorous standards, if any, as State or Contractor applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Contractor’s and/or its permitted contractors’ operations and security procedures and controls; (iv) examine and verify Contractor’s and/or its permitted contractors’ disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Contractor’s and/or its permitted contractors’ performance of the Services including audits of: (1) practices and procedures; (2) systems, communications and information technology; (3) general controls and physical and data/information security practices and procedures; (4) quality initiatives and quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes,

resources and data; (6) Contractor's and/or its permitted contractors' efficiency and costs in performing Services; (7) compliance with the terms of this Contract and applicable laws, and (9) any other matters reasonably requested by the State. Contractor shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software.

- b. **Operations Security.** The Contractor shall cause an SSAE 16 SOC 2 Type 2 audit report to be conducted annually. The audit results and the Contractor's plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor's receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Contractor's fiscal year, the Contractor shall transmit its annual audited financial statements to the State.

13. CONFLICTS OF INTEREST

Contractor agrees that during the term of this Contract, its performance shall be solely in the best interest of the State. Contractor will not perform Services for any person or entity which has also contracted with the State of Vermont in connection with the same project, without express written consent of the State. Contractor shall fully disclose, in writing, any such conflicts of interest, including the nature and extent of the work to be performed for any other person or entity so that the State may be fully informed prior to giving any consent. Contractor agrees that the failure to disclose any such conflicts shall be deemed an event of default under this Contract, and this Contract shall be terminable immediately.

14. MISCELLANEOUS

- a. **Taxes.** Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished upon request covering taxable items. The Contractor agrees to pay all Vermont taxes which may be due as a result of this Contract.
- b. **Force Majeure.** Neither the State nor the Contractor shall be liable to the other for any failure or delay of performance of any obligations hereunder to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control making it illegal or impossible to perform their obligations under this Contract, including without limitation, acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war, terrorism or riots. If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Contract, substantially fulfilled all

non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

- c. **Marketing.** Neither party to this Contract shall refer to the other party in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of such party prior to release.
- d. In addition to any other security standard or requirements set forth in this Contract, the Contractor agrees as follows:

15. IRS TERMS IF FEDERAL TAX INFO WILL BE PROCESSED OR STORED (Per IRS Publication 1075)

In addition to any other security standard or requirements set forth in this Contract, the Contractor agrees as follows:

A. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

1. All work will be done under the supervision of the Contractor or the Contractor's employees.
2. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
3. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
4. The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
5. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State or his or her designee. When this is

- not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the State or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.
6. All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
 7. No work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS.
 8. The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
 9. The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

B. CRIMINAL/CIVIL SANCTIONS:

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to

- the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.
3. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

C. INSPECTION:

The IRS and the State shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

ATTACHMENT E

BUSINESS PARTNER AGREEMENT

This Business Partner 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 (“DVHA”)** and **Benaissance, LLC-A WEX Company, (“Business Partner”)** as of **March 1, 2015** (“Effective Date”). This Agreement supplements and is made a part of the Contract to which it is attached.

DVHA and Business Partner (“the Parties”) agree to comply with the terms of this Agreement and the standards promulgated under the Patient Protection and Affordable Care Act of 2010 (Public Law 111-148) as amended by the Health Care and Education Reconciliation Act (Public Law 111-152), and referred to collectively as the Affordable Care Act (ACA), and 45 CFR §155.260, “Privacy and security of personally identifiable information.” Business Partner information that constitutes protected health information (PHI) may have additional standards to which the Business Partner must adhere, which would be set out in a separate agreement.

1. **Definitions.** All capitalized terms in this Agreement have the meanings identified in this Agreement and 45 CFR Part 155, “Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act.”

1.1 The term “**Services**” includes all work performed by the Business Partner for or on behalf of DVHA that requires the access, collection, use and/or disclosure of personally identifiable information (PII).

1.2 The term “**PII**” refers to personally identifiable information in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name.

1.3 The term “**Minimum Functions**” includes all work performed (or Contracted to be performed) pursuant to subparts D, E, H, and K of 45 CFR 155, if such work requires the Business Partner to create, collect, use, or disclose PII.

1.4 The term “**Agreement**” refers to this Business Partner Agreement, which details the privacy and security requirements that the Parties must adhere to.

1.5 The term “**Individual**” includes applicants, enrollees, and qualified individuals applying for coverage at the Vermont Health Insurance Exchange or Medicaid Agency.

1.6 The term “**Breach**” means the loss of control, compromise, and unauthorized disclosure, acquisition, access, or use, and any similar term referring to situations where: (a) PII is used for an unauthorized purpose, or (b) persons other than authorized users have access or potential access to PII.

2. **Authorized Uses/Disclosures of PII**

2.1 Except as limited in this Agreement, Business Partner may only create, collect, use or disclose PII to the extent necessary to perform Services specified in the underlying Contract with DVHA. In the course of providing Services, Business Partner shall not

use or disclose PII in any manner that would constitute a violation of 45 CFR §155.260 if used or disclosed by DVHA.

- 2.2 Business Partner may make PII available to its employees who need access to perform Services and/or Minimum Functions, provided that Business Partner makes such employees aware of the creation, collection, use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Partner must also require workforce compliance with 45 CFR §155.260 when employees create, collect, use, or disclose PII in the course of providing Services
3. **Privacy Requirements.** Uses and disclosures of PII to carry out the Services identified in the Contract must be of the minimum amount of PII necessary to perform the Services. Business Partner may not create, collect, use or disclose PII gathered for the purposes listed in 45 CFR §155.260(a)(1) while performing Minimum Functions unless the creation, collection, use or disclosure is consistent with the written policies and procedures identified by the State in accordance with 45 CFR §155.260. In addition, Business Partner must ensure workforce compliance with these policies and procedures
4. **Security Safeguard Requirements.**
 - 4.1 Business Partner shall implement and use appropriate safeguards to prevent the use or disclosure of PII except as provided for by this Agreement, an Interconnection Security Agreement, if applicable, and as set forth in 45 CFR 155.260(a)(3)(vii) and (4).
 - 4.2 Business Partner shall monitor, periodically assess, and update its security controls and related system risks to ensure the continued effectiveness of those controls in accordance with 45 CFR § 155.260(a)(5).
 - 4.3 Business Partner shall inform DVHA of any material change in its administrative, technical, or operational environments that would require an alteration of the privacy and security standards within this Agreement.
5. **Documenting and Reporting Breaches.** Business Partner shall report to DVHA any Breach of PII as soon as it (or any of its employees or agents) becomes aware of such Breach, and in no case later than one (1) hour after it (or any of its employees or agents) become aware of the Breach. If DVHA determines that a Breach of PII occurred for which one of Business Partner's employees or agents was responsible, upon its request, Business Partner shall provide notice to the individual(s) whose PII was the subject of the Breach. When requested to provide notice, Business Partner shall consult with DVHA about the timeliness, content and method of notice, and shall receive DVHA's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Partner. Business Partner shall also be responsible for any reporting as required by 9 V.S.A. § 2435.
6. **Mitigation and Corrective Action Requirements.** Business Partner shall mitigate, to the extent practicable, any harmful effect that is known to it of a Breach of PII. Business Partner

shall draft and carry out a plan of corrective action to address any incident of impermissible collection, use or disclosure of PII, subject to DVHA's prior review and written approval.

7. **Requirements for Agreements with Third Parties.** Business Partner may only disclose PII to its agents, including subcontractors, for the purposes authorized by this Agreement. Business Partner shall ensure that any agent (including any subcontractor) to whom it provides PII received from DVHA or created or received by Business Partner on behalf of DVHA agrees in a written agreement to the same PII restrictions and conditions that apply through this Agreement to Business Partner. Business Partner must enter into the written agreement and obtain the prior written consent of DVHA before any use or disclosure of PII to such agent. The written agreement must identify DVHA as a direct and intended third party beneficiary with the right to enforce any Breach of the agreement concerning the use or disclosure of PII. Business Partner shall provide a copy of the signed agreement to DVHA upon request.

8. **Termination**

8.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by DVHA or until all of the PII provided by DVHA to Business Partner or created or received by Business Partner on behalf of DVHA is destroyed or returned to DVHA subject to Section 9.

8.2 If Business Partner breaches any material term of this Agreement, DVHA, without liability or penalty, may either: (a) provide in writing an opportunity and time frame for Business Partner to cure the breach and terminate the Contract if Business Partner fails to cure; or (b) immediately terminate the Contract if DVHA believes that cure is not reasonably possible. DVHA has the right to seek to cure any breach by Business Partner and this right, regardless of whether DVHA cures such breach, does not lessen any right or remedy available to DVHA at law, in equity, or under the Contract, nor does it lessen Business Partner's responsibility for such breach or its duty to cure such breach.

9. **Responsibility for the Return/Destruction of PII**

9.1 Business Partner, in connection with the expiration or termination of the Contract, shall return or destroy, at the discretion of DVHA, all PII received from DVHA or created or received by Business Partner on behalf of DVHA pursuant to the Contract that Business Partner still maintains within thirty (30) days after such expiration or termination. Business Partner shall not retain any copies of the PII. Within the thirty (30) day period, Business Partner shall certify in writing to DVHA that (1) all PII has been returned or destroyed, and (2) Business Partner does not continue to maintain any PII.

9.2 Business Partner shall provide to DVHA notification of any conditions that Business Partner believes make the return or destruction of PII infeasible. If DVHA agrees that return or destruction is infeasible, Business Partner shall extend the protections of this Agreement to such PII and limit further uses and disclosures of such PII to those

conditions that make the return or destruction infeasible for so long as Business Partner maintains such PII.

- 10. Penalties.** Business Partner understands that it may be subject to a civil penalty, in addition to other penalties that may be prescribed by law, resulting from the improper creation, collection, use or disclosure of PII. In addition, violations of this Agreement may result in notification by DVHA to law enforcement officials and regulatory, accreditation, and licensure organizations.
- 11. Training.** Business Partner shall participate in training regarding the use, confidentiality, and security of PII at DVHA's request.

12. Miscellaneous

- 12.1 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.
- 12.2 Business Partner shall cooperate with DVHA to amend this Agreement from time to time as is necessary for DVHA to comply with 45 CFR §155.260 or any other standards promulgated under the ACA, or DVHA's contractual obligations to CMS.
- 12.3 Any ambiguity in this Agreement shall be resolved to permit DVHA to comply with 45 CFR §155.260, or any other standards promulgated under the ACA, or DVHA's contractual obligations to CMS.
- 12.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., the ACA) in construing the meaning and effect of this Agreement.
- 12.5 As between Business Partner and DVHA, DVHA owns all PII provided by DVHA to Business Partner or created or received by Business Partner on behalf of DVHA.
- 12.6 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement.

The following provisions apply only to those Business Partners that will be accessing Federal Tax Information (FTI).

As applicable, DVHA and Business Partner ("the Parties") agree to comply with the terms of this Agreement and the Language for General Services and Technology Services pursuant to IRS Publication 1075, Exhibit 7:

- 13. General Services; Performance.** In performance of this Contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:
- 13.1 All work will be performed under the supervision of the contractor or the contractor's responsible employees.

- 13.2 Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.
- 13.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- 13.4 No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- 13.5 The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- 13.6 DVHA will have the right to void the Contract if the contractor fails to provide the safeguards described above.

14. General Services; Criminal/Civil Sanctions

- 14.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 14.2 Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such Person shall also notify such officer and employee that such authorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal

- employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.
- 14.3 Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- 14.4 Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review as part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, /RC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.
15. **General Services; Inspection.** DVHA shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.
16. **Technology Services; Performance.** In performance of this Contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:
- 16.1 All work will be done under the supervision of the contractor or the contractor's employees.

- 16.2 Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- 16.3 All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- 16.4 The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- 16.5 Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- 16.6 All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- 16.7 No work involving FTI furnished under this Contract will be subcontracted without prior written approval of the IRS.

17. Technology Services; Criminal/Civil Sanctions

- 17.1 Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with

- respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 17.2 Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such Person shall also notify such officer and employee that such authorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.
- 17.3 Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- 17.4 Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review as part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, /RC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

18. Technology Services; Inspection. The IRS and DVHA shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

(Rev:11/15/13)

ATTACHMENT F

AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

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

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

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

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

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

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

Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually

thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*.

4. Non-discrimination Based on National Origin as evidenced by Limited English

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

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

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

7. Privacy and Security Standards.

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

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

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

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

8. Abuse Registry. The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of Services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a

valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a) (3) & 33 V.S.A. §6911(c) (3)).

9. Reporting of Abuse, Neglect, or Exploitation. Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of Services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

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

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

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

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

The Contractor will ensure the physical and data security associated with computer equipment - including desktops, notebooks, and other portable devices - used in connection

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

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

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

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

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

14. Non-discrimination. The Contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

The Contractor will also not refuse, withhold from or deny to any person the benefit of Services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

15. Environmental Tobacco Smoke. Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development Services, education or library Services to children under the age of 18, if the Services are funded by federal programs either

directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's Services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

The law does not apply to children's Services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

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

ATTACHMENT G

CERTIFICATE OF ACCEPTANCE

The **Certificate of Acceptance** is a written certification, delivered to Contractor and signed by an authorized representative of the State, stating that any Defects in a particular Milestone discovered after implementation and testing have been corrected as required under this Contract, and that the Milestone complies in all material respects with all of the applicable Requirements. There will be four (4) Certificates of Acceptance possible, one per Milestone.

Milestone 1.

Submission Date:

Medicaid Deliverables:

Initial month due – Milestone 1

The Contractor shall calculate a revised billing start date for Medicaid recipients.

- a. The Contractor will modify the billing start dates for Medicaid plans to begin billing at the first day of the next billing month after the approval month based on State Medicaid rules.
- b. The Contractor shall update the billing start date upon receipt of enrollment information from the State.

Currently, the billing start date for a customer begins with the application month, which can be several months prior to the approval month depending on processing timeframes. Traditionally, customers were allowed to pay for insurance from the month following the approval month going forward. If a customer wished, a customer could pay for and obtain coverage retroactive to the application month. The State has determined that the Contractor shall collect the insurance premium from the first of the month following the approval month going forward, and prior months, back to the application month, will be awarded at no cost.

Grace period tracking and billing – Milestone 1

The State will implement a 60-day grace period for any customer who does not pay his or her monthly premium by the due date. Under federal law, a customer cannot be terminated from Medicaid for non-payment of premium until they have failed to pay the premium for at least 60 days.

- c. The Contractor shall determine and track rolling grace periods for the Medicaid record only, and will provide electronic communication via an API (Application

Programming Interface) call to the State indicating customers entering grace periods and exiting grace periods.

- d. The State shall send all notifications to the customer regarding the customer's grace period.

Milestone 2.

Submission Date:

Medicaid Deliverables:

Split billing and split accounting – Milestone 2

The State has determined to implement split billing and split accounting to facilitate compliance with Medicaid rules. Customers shall be able to pay for only their Medicaid premiums if they choose to do so and will not be required to pay the full amount owed for all of their health care programs in order to be deemed current in their payments.

- a. The Contractor shall split the records sent from the State which include a Medicaid record and at least one of the following:
 - i. Qualified Health Plan (QHP)
 - ii. Dental plan
- b. The Contractor shall return values to the State in a single API call with adequate detail to present information in the State's Exchange UI (User Interface) regarding the single record in the State records.
- c. The State shall build and maintain the presentation layer within the State's existing or new Vermont Health Connect system (VHC) User Interface.

Terminations for non-payment after grace period expiration – Milestone 3

The Contractor shall notify the state to terminate a customer's Medicaid coverage when a customer has failed to pay their premium by the last day of the grace period.

- d. The Contractor will notify the State systematically when a customer's Medicaid should be terminated for non-payment via a State preferred methodology.
- e. The State shall confirm receipt of the notice via an API (Application Programming Interface) and communicate termination information to the affected customer as required by applicable law, regulation or rule.
- f. The State will be responsible for notifying customers of termination and plan closure.

Milestone 3.

Submission Date:

Medicaid Deliverables:

Reinstatements – Milestone 3

The state needs to be able to reinstate a customer who was terminated for non-payment of a premium when their payment was postmarked on or before the last day of the grace period. The Contractor shall determine when a Customer's Medicaid should be reinstated and notify the State.

- a. The Contractor shall systematically notify the State when a customer's Medicaid should be reinstated for timely payment.
- b. The State System will confirm receipt of the notice and communicate reinstatement information to the affected customers as required by applicable law, regulation or rule.
- c. The State will be responsible for notifying customers of plan reinstatement.

1st Subsequent Invoice – Milestone 3

The Contractor shall include special text provided by the State to the first monthly bill that gets generated for the Customers who have not paid their initial bill by the time the monthly bills are generated. The text shall explain why the second invoice is being generated and what the customer must pay to enroll.

- d. The Contractor shall build logic into the subsequent invoice process to present State supplied text specific to members who have not satisfied their first month of Medicaid premium by the time the first subsequent invoice is created.

Exceptions - manual payment allocation – Milestone 3

The Contractor shall build an API in order to provide a more efficient way for State staff to systematically request that the Contractor move money from one program to another within a customer's account.

- e. The Contractor shall provide an API (Application Program Interface) call to allow for money to be moved from the QHP/Dental record to the Medicaid record of a member's split record and vice versa.
- f. State Requirements; The State will modify the customer service interface to allow a request for movement of funds to be sent electronically to Contractor.

Hardship refunds – Milestone 3

The contractor shall build functionality into its API (Application Program Interface) in order to provide a more efficient way for State staff to systematically request that the Contractor issue an expedited hardship refund to a customer.

- g. The Contractor shall provide functionality within its Application Program Interface (API) to allow State staff to request hardship refunds be processed on individual records.
- h. State Obligations:
 - i. The State will provide an interface for employees to request hardship refunds with security controls to permit only authorized personnel to access the refund functionality.
 - ii. The State Vermont Health Connect system (VHC) will enable a Member to request the refund from within the VHC User Interface (UI). The State and the Contractor have entered into a separate contract (#28670) dated July 1, 2015 pursuant to which Contractor shall process hardship refunds.

Milestone 4.

Submission Date:

Medicaid Deliverables:

Medicaid Premium Notices – Milestone 4

Once split billing has been implemented by Contractor, as set forth herein, Contractor shall issue customers separate invoices for Medicaid containing Medicaid-specific information.

- a. The Contractor shall issue separate Premium invoices to customers on Medicaid Plans.
- b. The language for the Medicaid invoices shall be configurable and distinct from the QHP and Dental combined invoices.

Combined view of accounting/payment history across all programs – Milestone 4

The Contractor shall build an API (Application Program Interface) to allow State staff to be able to see within the State System, a customer's full billing/payment information as a combined view as well as broken down by program.

- c. The Contractor shall provide API (Application Program Interface) calls to retrieve data at the member level for all plan types.
- d. The State will create the UI (User Interface) views to propagate the returned data from the Contractor in a meaningful and easily understandable way for the customers on the VHC.

Cancellation of plan for non-payment – Milestone 4

The Contractor shall notify the state to cancel a customer's Medicaid eligibility when a customer has failed to pay their initial premium by the due date.

- e. The Contractor shall inform the State systematically of plans not paid which need to be cancelled.
- f. Assumptions:
 - i. The State will respond, via API, to affirm the cancellation suggestion.
 - ii. The State will communicate information regarding the cancellation to the relevant connected system.
 - iii. The State will be responsible for all noticing required for cancellation.

Approver: Vermont Health Access:

Reviewer(s): Business Office Representative:

Milestone Number and Description: _____

Acceptance of Milestone/ Medicaid Deliverable	Comments
<input type="checkbox"/> Approved	
<input type="checkbox"/> Rejected	

APPROVER, NAME : _____

APPROVER, SIGNATURE
DATE

ATTACHMENT H
FINAL ACCEPTANCE

Approver: Vermont Health Access:
Reviewer(s): Business Office Representative:

“Final Acceptance.” Final Acceptance shall mean that a written certification, delivered by the State to the Contractor and signed by the State authorized representative, the Contract Manager, indicating that two monthly billing cycles have passed after production of all the deliverables in the contract, that all deliverables work together in the Vermont Health Connect System and all deliverables work without defect or the need for remediation.

Acceptance of Milestone/ Medicaid Deliverable	Comments
<input type="checkbox"/> Approved	
<input type="checkbox"/> Rejected	

APPROVER, NAME : _____

APPROVER, SIGNATURE
DATE