

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and the Wakely Consulting Group, Inc., with a principal place of business in Boston, MA (hereafter called "Contractor"). The Contractor's form of business organization is a Corporation. The Contractor's local address is One Constitution Center, Boston, MA 02129. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number
2. **Subject Matter.** The subject matter of this contract is personal services generally on the subject of assisting with the second year of planning, designing, and developing Vermont's Health Benefits Exchange. 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 \$1,499,987.64.
4. **Contract Term.** The period of Contractor's performance shall begin on February 10, 2012 and end on November 15, 2012. The State and the Contractor have the option of renewing this contract for up to two (2) one-year extensions.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office is required.

Approval by the Secretary of Administration is required.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This contract may be suspended or cancelled by either party by giving the other party written notice at least 30 days in advance. Notwithstanding this provision, in the event that federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract with no obligation to pay the Contractor from State revenues.
8. **Attachments.** This contract consists of 36 pages including the following attachments, which are incorporated herein:
 - Attachment A - Specifications of Work to be Performed
 - Attachment B - Payment Provisions
 - Attachment C - Customary State Contract provisions
 - Attachment E - Business Associate Agreement
 - Attachment F - Customary Contract Provisions of the Agency of Human Services

The order of precedence of documents shall be as follows:

- 1). This document
- 3). Attachment C
- 4). Attachment A
- 5). Attachment B

- 6). Attachment E
- 7) Attachment F

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

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

MARK LARSON, COMMISSIONER

DATE

PATRICK HOLLAND, MANAGING DIRECTOR

DATE

ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

General Conditions

- This Contract is funded by federal grant funding. All terms of this Contract are subject to any requirements necessary to obtain and maintain such funding. No State funds will be used to fund this Contract.
- Lindsey Tucker and Betsy Forrest of DVHA shall serve as the State's primary contact for this Contract. Patrick Holland and Kathie Mazza shall serve as the Contractor's primary contact for this Contract. Such contacts may be changed by written notice to the other party
- The State and the Contractor shall meet weekly, in person or by conference call, to review progress on contract work.
- Contractor and the State acknowledge that much of the work performed under this Contract is interrelated with other Exchange development work occurring simultaneously. As such, Contractor and its subcontractors will coordinate with the State's outreach and education contractor on all tasks that involve meeting with or surveying individuals, employers, and employees. Contractor will coordinate with other State contractors as needed.
- Deliverables will be submitted to the State by dates shown. For each deliverable, upon delivery to the State, the State will have one week to provide feedback to the Contractor, after which the Contractor will have one week to submit a revised draft to the State. The State will have one week to review the second draft and provide comments to the Contractor, after which the Contractor will provide the final deliverable within one week of receiving the State's comments. In some situations the State may waive the right to a second draft.
- Work plan deliverables for each section will include tasks, timelines, Contractor task lead, and key Contractor personnel.
- Assisting in the development of any RFP shall preclude the Contractor from bidding on that RFP.

Section 1: Exchange Operations/Business Functions

A. Call Center

The Exchange must provide a toll-free telephone hotline to assist individuals and small employers in all aspects of the Exchange process, including plan selection. The State's existing call center must be enhanced to meet Affordable Care Act (ACA) requirements and best practices.

Contractor will:

- Review current call center contract and inventory current call center functions
- Review federal requirements and best practices for a call center that will serve both the Exchange and other publicly-funded health care programs, such as Medicaid
- Identify modifications to the current call center necessary to assure full compliance with Exchange requirements, including additional staff and technology resources
- Draft an amendment to the contract with the current call center vendor.

Deliverables:

1. Scope definition

Contractor will submit a scope definition after an initial meeting with key State representatives. During this meeting the State and the Contractor will develop a list of individuals/organizations with which the Contractor will schedule interviews. Contractor will gather other data as necessary to complete the scope definition.

2. Assessment of Current Call Center

Contractor will submit a report that contains an assessment of current call center operations and a determination of what modifications/enhancements are needed to meet ACA requirements and improve call center functioning. To complete this report Contractor will:

- Review pertinent documents, such as the current call center contract and monthly and annual reports submitted by the call center vendor to the State
- Complete interviews with individuals and organizations, including consumers and/or organizations advocating for consumers, identified in the scope of work to understand the processes, staffing, and technologies that support current programs
 - Interview sessions will be 2 hours with up to 10 key stakeholders and/or stakeholder groups.
 - State will identify and ensure availability of identified stakeholders and/or stakeholder groups within 10 days of contract execution.
 - Stakeholder interviews will be performed via teleconference unless they are able to be scheduled in conjunction with planned call center activity kickoff meeting.
- Develop a baseline of “as is” call center operations
- Analyze the gaps between the federal requirements, leading practices for supporting individuals and small businesses, and the current state
- Utilize these comparisons to identify specific processes or situations where there are potential opportunities for standardization, simplification, or modifications necessary to align with federal requirements.

3. Strategy for modification/enhancement of current call center

Contractor will submit a final assessment report that will include recommendations on the specific areas in need of modifications, either through staffing, process changes, or technology enhancements. The assessment report will recommend either modifying the current call center contract or issuing an RFP to engage a contractor in developing a new call center. The deliverable will also include a narrative of potential risks, issues, or roadblocks that could prevent call center operations from being ready mid-2013, prior to open enrollment.

To complete this report, Contractor will:

- Validate analysis and assumptions through a stakeholder checkpoint
- Develop Gap Analysis
- Develop recommendations
- Debrief stakeholders
- Present findings and comparative analysis of current state vs. future alignment
- Prioritize activities.

4. Proposed language for an amendment to current call center contract

Contractor will propose language for an amendment to the current call center contract to encompass the recommendations in the strategy deliverable. As part of the Contractor’s final deliverable to the State, the gap analysis will provide content for potential inclusion in an amendment to the State’s contract with its existing call center provider. Development of the actual amendment to the existing contract will be the responsibility of the State’s contracting organization and/or legal team.

Assumptions and Clarifications:

1. All available documents requested in the “Pre-Assessment Information Data Request” will be provided within five (5) business days of contract start date.
2. The assessment, gap analysis and final deliverables will be based on information gathered through interviews and data collected specific to people, processes, technology, metrics/measurements, standards and requirements in support of the existing consumers of call center services.

Given the timeline and specific requirements of the State, other deliverables typically associated with a more comprehensive call center assessment are not considered to be in scope for this engagement and will be excluded from the final deliverables. Specific exclusions are as follows:

- Maturity Benchmark Analysis
- Activity Based Cost Analysis and Modeling
- Impact Analysis
- Financial Benefits and Savings Analysis
- Sourcing Analysis
- Future State Solution Scenarios

Section 1: Exchange Operations/Business Functions - Call Center		
Deliverable	Due Date	Sub-Project Budget Allocation
Scope definition and work plan	2/17/2012	40%
Interim Call Center Findings	3/5/2012	20%
Call Center Assessment Report (DRAFT)– Including process gaps findings, Strategy for enhancing current call center; and recommended Contract amendment content	3/24/2012	20%
Call Center Assessment Report (FINAL)– Including process gaps findings, Strategy for enhancing current call center, and recommended Contract amendment content	4/24/2012	20%

B. Financial Management

The Exchange must develop a financial management system that offers integrity and a thoughtful and detailed approach to maintaining efficient spending and revenue streams. The system will need to adhere to federal financial management standards. In addition, the State is required to have adequate financial management systems and provide efficient and effective accountability and control of all property, funds, and assets related to grants and cooperative agreements with the federal government. Although the accounting standards already in place ensure adequate financial management, the State will need to assess the specific policies required by the federal government and adapt policies as needed and allowed within State law.

Contractor will:

- Analyze current system, building on work done in Year 1 of planning, by researching federal and state policies and requirements and identifying necessary modifications
- Finalize Year 1 cost estimates for development and operation of all Exchange functions
- Finalize a sustainability plan, including revenue sources and amounts.

Deliverables:

1. Assessment of financial management and reporting capacity of current system

Contractor will analyze existing capacity to determine how/if existing functions can be leveraged and which elements/functions must be newly developed. Contractor will focus on these specific areas:

- Type of accounting and financial reporting systems appropriate to the Exchange
- Model under consideration, including expected cost of implementation and reporting structure
- Premium billing systems, including lockbox functions
- Policies and procedures in the areas of financial reporting, accounts payable/receivable, and premium write-off
- Organizational integration required to track premium collections and reconcile premium tax credits and cost-sharing subsidies
- Vendor, carrier, and systems interface and reporting relationships
- Control and management of exchange data and financial information.

To complete this analysis, Contractor will:

- Provide a detailed analysis of state and federal requirements for financial management and reporting
- Review existing work performed to date to assess state financial management and reporting capacity as it relates to the Exchange
- Conduct site visits and document and policy reviews, as well as interviews with key staff, to identify and assess existing financial management policies and procedures, as well as information capture and reporting capacity
- Develop recommendations for refinement, modification, and/or addition of financial management reporting policies and resources to meet state and federal requirements.

2. Exchange one-year and five-year expense projections

Contractor will provide a report that builds on previously-completed work to develop detailed estimates of anticipated expenses during the start-up and operational phases, as well as the revenue required to support such operations. Contractor will assist in developing risk mitigation strategies, such as vendor contract models and timing of payments to optimize cash flow. Cost estimates will take into account broker compensation models and the cost of navigator services.

To complete the expense projections, Contractor will:

- Conduct a detailed review of existing expense estimates, including a review of State source information
- Develop a range of refined estimates of Exchange expenses during start-up and operations, projected through 2016, and accounting for key enrollment scenarios and critical policy decision-making pathways
- Provide an interactive and iterative expense planning tool, tailored to the State's needs, that can be inherited, operated, and modified during the contract period and after the contract ends

3. Self-sustainability plan

Contractor will build on previously-completed work by the State’s Exchange planning contractor to support the development of a sustainability plan with a refined estimate of Exchange operating costs and an evaluation of the pros and cons of various financing options. Relevant considerations when weighing different financing options include:

- Anticipated enrollment, including estimated take-up rates, in the Exchange (the non-group and small group markets) and premium levels
- Impact of the ACA’s coverage expansion through federal subsidies on existing State funding mechanisms
- Desire for a broad funding source, such as user fee across all health insurance
- The impact of Exchange financing method on different market sectors, including plans sold inside and outside the Exchange; in the small, non-, and large group insured markets; and on self-insured and government payers and/or providers.

To complete the self-sustainability plan, Contractor will:

- Use existing data sources and staff interviews to develop baseline information on sources and uses of current State health care financing mechanisms
- Use five-year Exchange budget projections as a base, supplemented with market information related to existing funding mechanisms and known revenue streams, to develop a financial model of Exchange sustainability capable of projecting a range of expense and revenue scenarios to support State decision-making and planning processes.

The written report will highlight a range of potential funding mechanisms, including an impact analysis of each method and review of pros and cons based on considerations of financial sufficiency, market impact, stability/predictability, and impact on existing or anticipated sources and uses of health care revenue initiatives.

Section 1: Exchange Operations/Business Functions - Financial Management		
Deliverable	Due Date	Sub-Project Budget Allocation
Work plan	2/17/2012	10%
Assessment of current system capacity	3/31/2012	30%
One- and five-year expense projections	4/30/2012	30%
Self-sustainability plan	6/30/2012	30%

C. Program Integrity

The Exchange must combat waste, fraud, and abuse within all its systems, including its financial management system, the eligibility determination process, appeals for exemptions to the individual mandate, and overall information and funds that flow through the Exchange. The State intends to leverage existing processes to the extent possible.

Contractor will:

- Review existing policies/procedures aimed at preventing waste, fraud, and abuse
- Review federal auditing requirements and develop/modify procedures to meet them

- Assess existing programs across several departments/agencies, review federal requirements, and develop a plan for enhancing existing programs and/or adding programs for the Exchange
- Develop procedures for an independent, external audit, fraud detection, and reporting to the federal government on efforts to prevent waste, fraud, and abuse
- Ensure that program integrity functions are aligned between Medicaid and the Exchange to the extent allowable under federal law.

Contractor will work closely with the State to understand the capabilities and limitations of the existing accounting and financial management infrastructure to determine whether it meets the complex transactional and reporting needs of the Exchange, and will assist the State in developing the appropriate financial structure to ensure that internal and external management reports are accurate and timely, and that the system of internal control is robust enough to meet the rigors of state and federal audits.

Deliverables:

1. Written recommendations that analyze and address the following:
 - The accounting and financial reporting systems needed for the State’s Exchange, taking into account the Exchange’s relationship with its host department, as well as how an Exchange interacts with other state and private health programs
 - Policies and procedures in the areas of financial reporting, accounts payable/receivable, and premium write-off
 - Whether current finance and accounting resources could meet the ongoing reporting and auditing needs of the Exchange
 - An implementation plan for the accounting and reporting functions that includes cost, reporting structure, recommendations for reports, and chart of accounts.
2. Recommendations and multi-year plan for reducing waste, fraud, and abuse, based on Contractor’s work to:
 - Assess current policies and procedures for the prevention of waste, fraud, and abuse at different state agencies and across different programs with a particular focus on Medicaid. This analysis will include an evaluation of the eligibility requirements and appeal needs of each program, and how they crosswalk to the standards required under the Exchange.
 - Evaluate innovative prevention procedures in private industry and whether these procedures could apply to the Exchange
 - Consult with the state workgroup tasked to implement the technical components of “no wrong door” eligibility to ensure adequate control functions and protocols are in place.

Section 1: Exchange Operations/Business Functions - Program Integrity		
Deliverable	Due Date	Sub-Project Budget Allocation
Work plan	2/17/2012	10%
Recommendations	5/15/2012	45%
Multi-year plan	6/30/2012	45%

D. Exchange Staffing

Contractor will develop a staffing plan that is appropriate for the structure envisioned by the State’s Exchange. Contractor will:

- Review existing staffing plans and standard State employee compensation and benefit levels
- Develop refined staffing estimates, organizational charts, and recommended sequence of hiring based on the estimated scale of the Exchange, the functionality included in Exchange design, and the ability to leverage existing staff and/or functional expertise from within State government.
- Develop annual staffing cost estimates and place staffing costs into a 5-year financial model, including revenues, to judge “affordability” of staff budget
- Work with the Exchange Deputy Director to revise staffing plans, if necessary, for achieving self-sustainability
- Finalize staffing plan and develop job descriptions for key staff.

Deliverables

1. Report on estimated needed staffing capacity, organizational charts, and sequence of hiring (draft to be refined into final staffing plan)
2. Estimated staffing costs and 5-year financial model
3. Final staffing plan and job descriptions

Section 1: Exchange Operations/Business Functions - Exchange Staffing		
Deliverable	Due Date	Sub-Project Budget Allocation
Work plan	2/17/2012	10%
Initial report on staffing capacity	4/30/2012	30%
Estimated staffing costs	4/30/2012	30%
Staffing plan & job descriptions	6/15/2012	30%

E. Exchange Evaluation

Contractor will develop an evaluation plan for the State’s operational Exchange to enable the State to track the performance of the Exchange in general, as well as other aspects of health reform implementation, such as health insurance coverage, health care access, quality and affordability, and health outcomes. The evaluation program must be able to detect both positive and negative impacts of the Exchange in order to determine whether the Exchange is meeting its policy goals and to allow the State to recognize quickly and correct any unforeseen and unanticipated negative effects.

In developing the plan, Contractor will:

- Meet with key State officials to review the goals of the Exchange and, using its experience with other states, identify a few key indicators under each goal
- Inventory health care data sources, both national and state-based, to determine how indicators can be measured
- Identify any gaps in data needed and propose strategies for obtaining the needed data
- Develop a reporting template and define a process and timeline for periodic measurement

- Develop a budget for the proposed plan to allow State staff to prioritize and triage elements of the plan for incorporation into self-sufficiency projections
- Produce a baseline data report prior to Exchange implementation.

Deliverables:

1. Report identifying Exchange goals and key indicators, potential existing data sources, data gaps, and recommendations on how to close gaps
2. Reporting template and process
3. Baseline data report

Section 1: Exchange Operations/Business Functions - Exchange Evaluation		
Deliverable	Due Date	Sub-Project Budget Allocation
Work plan	2/17/2012	0%
Report on goals & indicators & data collection	4/15/2012	50%
Reporting template & process	4/30/2012	25%
Baseline data report	5/30/2012	25%

F. Level 2 Establishment Grant Application

Contractor will provide overall project management for the development and compilation of the State’s Level 2 Establishment grant application. With the support and assistance of State staff, Contractor will develop the abstract, budget, budget narrative, work plan, project narrative, and other supporting documentation that corresponds with Contractor projects, and will incorporate the language developed by State staff or other contracted staff for the other sections. The Level 2 Establishment grant application is currently scheduled to be submitted before the end of June 2012.

Deliverables

1. Draft application
2. Final application

Section 1: Exchange Operations/Business Functions - Level 2 Establishment Grant Application		
Deliverable	Due Date	Sub-Project Budget Allocation
Work plan	3/1/2012	25%
Draft application	6/1/2012	50%
Final application	6/15/2012	25%

Section 2: SHOP/Individual & Employee Responsibility/Enrollment

A. SHOP Exchange

Although the State intends to build one Exchange for both individuals and small employers, the SHOP

must have robust features that will make it attractive to small employers. For example, consideration should be given to having the Exchange administer COBRA benefits, whether employers will be allowed to customize plans, whether the Exchange will accept contributions from more than one employer for purposes of providing coverage for an individual or family, and whether specific call center employees should be assigned to a business in order to become familiar with that business.

Contractor will:

- Work with the State to identify priorities for the SHOP Exchange
- Conduct design meetings with employers and employees
- Research models in use in other states
- Develop a proposed SHOP model that considers the feasibility of including a small business tax credit calculator, a simple method for determining whether an employer insurance plan meets ACA Minimum Essential Coverage requirements, automated verification of employer size and location, and other features that will make it attractive and easy to use for employers and employees
- Coordinate with contractor designing the navigator program to define the role, if any, brokers will have in the Exchange
- Test the proposed model with small business representatives
- Develop cost estimates for mandatory and optional SHOP functions, taking into consideration additional staff, technology, and consulting/contracting needs
- Work with the State to develop procedures and operational processes for the SHOP.

Deliverables

1. Report on design meetings and initial proposed design
2. Final report with summary of test meetings, final design, and development and operations cost estimates of basic SHOP features plus additional costs of optional features

Section 2: SHOP/Individual & Employee Responsibility/Enrollment - SHOP Exchange		
Deliverable	Due Date	Sub-Project Budget Allocation
Work plan	3/1/2012	15%
Report on initial proposed design	4/15/2012	50%
Final report on design & cost estimates	6/15/2012	35%

B. Individual and Employer Responsibility Determinations

The Exchange will be responsible for determining whether an individual should be exempt from complying with the insurance mandate based on the lack of Minimum Essential Coverage, the lack of an affordable plan, or other criteria as defined in the ACA and federal regulations. This function should leverage the existing Medicaid appeals function where possible. The Exchange must also determine whether individual employers are subject to tax penalties for employees who do not have access to Minimum Essential Coverage through the employer.

Contractor will:

- Review federal guidance and regulations in this area
- Evaluate existing State appeals functions in Medicaid and other publicly-funded health care programs and BISHCA appeals process for private coverage
- Work with the State to develop a business process model for determining whether an applicant for coverage has an employer plan available, and if so, whether that plan meets ACA Minimum Essential Coverage requirements; such process should be as least burdensome to the employer and the applicant as possible
- Work with the State to develop a business process model for receiving and evaluating exemption requests from individuals for ACA-allowed exemption reasons
- Work with the State to develop a business process model, with assistance from the State Department of Labor, to determine whether an employer is subject to a tax penalty based on the lack of an offer to employees of Minimum Essential Coverage and a method for employers to appeal this decision
- Define reporting requirements to individuals, employers, and the federal government based on decisions in these areas.

Deliverables

1. Recommendation on an efficient process for determining whether an individual applicant has an employer plan available that meets ACA requirements for value and affordability, whether the individual’s employer is subject to a tax penalty, a method for employers to appeal this decision, and how to report results to the individual, employer, and federal government

2. Recommendation on a process to determine exemptions from the individual mandate, whether existing appeals functions will meet requirements or need modifications and/or additional capacity, and how to report the determination to the individual and the federal government

Section 2: SHOP/Individual & Employee Responsibility/Enrollment - Individual and Employer Responsibility Determinations		
Deliverable	Due Date	Sub-Project Budget Allocation
Work plan	3/1/2012	0%
High-level description of process for determining availability of employer plan that meets requirements; slide deck for presentations to stakeholder groups; final review and editing of the State’s business process description	4/30/2012	50%
High-level description of process for determining exemptions from individual mandate; slide deck for presentations to stakeholder groups; final review and editing of State’s business process description	4/30/2012	50%

C. Enrollment in Qualified Health Plans

The Exchange must enroll individuals in Qualified Health Plans (QHPs), present participating employers with consolidated bills, collect premiums from employers, and potentially offer individuals

the choice of paying premiums to the Exchange or directly to the QHPs. Ideally, individuals and employers will be able to access a real-time eligibility decisions and health plan enrollment through the Exchange web portal. The Exchange must use standardized forms and formats for presenting health benefit options. The Exchange website will include this information, as well as a calculator that will allow individuals to determine their estimated out-of-pocket cost for various plan options. Alternatively, enrollment options by phone, by mail, or in person must also be available.

Contractor will:

- Evaluate the existing enrollment and premium payment processes in publicly-funded programs, such as Catamount Health
- Explore and evaluate enrollment/premium payment processes in use in other states
- Conduct meetings with insurers and small businesses to understand potential enrollment barriers, and develop options for simplifying the enrollment/premium payment process for employers and their employees
- Work with State to develop proposed efficient and seamless enrollment and reconciliation procedures for individuals, employers, and employees, including ACA requirement that there be no gap in coverage when an individual is changing plans
- Recommend whether brokers should have a role in the enrollment of employers or employees in the SHOP
- Work with State to develop billing and premium payment procedures for employers
- Evaluate the option of allowing individuals to choose to pay premiums to the Exchange, and recommend whether the State should adopt this option
- Work with State to develop process for notifying other required entities of individual enrollment, such as the federal government and employers.

Deliverables

1. Review of existing enrollment processes prepared by the State
2. Review and respond to business process models prepared by the State for enrollment and notification processes for individuals, employers, and employees
3. Recommended billing and payment procedures for individuals and employers

Section 2: SHOP/Individual & Employee Responsibility/Enrollment - Individual and Employer Responsibility Determinations		
Deliverable	Due Date	Sub-Project Budget Allocation
Work plan	3/1/2012	10%
Evaluation of existing enrollment processes	3/31/2012	30%
High-level description of enrollment business process models for individuals, employers, and employees; slide deck for presentation to stakeholder groups; final editing of State's business process descriptions	4/30/2012	30%
High-level description of billing & payment procedures for individuals and employers; slide deck for presentations to stakeholder groups; final editing of State's business process descriptions	4/30/2012	30%

Section 3: Health Insurance Market Reform

A. Analysis of the Impact of the Exchange on the Commercial Insurance Market Outside the Exchange

Vermont must, by operation of the ACA and Vermont Act 48, make decisions about the design of its non-group and small group health insurance markets.

Contractor will, for the duration of the Agreement, provide ongoing analysis and guidance as requested by State regarding the following issues as they evolve in the State, and in particular when they are the subject of pending legislation during the 2012 Vermont legislative session:

- The legislative choice between accepting the federal definition of small group insurance or, for the years 2012 through 2015, continuing the current definition in Vermont law
- The legislative option to merge the non-group and small group health insurance markets
- The likelihood that small group employers will choose to purchase through the Exchange
- The likelihood that employers will purchase unqualified plans
- The likelihood that employers will choose to self-insure rather than offer coverage through the Exchange
- The likelihood that employers will drop health care as an employee benefit
- The impact of prohibiting the offer of “bronze” plans in the Exchange.

Deliverables

Contractor will deliver the following reports to State, or update existing research in State’s possession, on:

1. Market impact of employer decisions to drop coverage
2. Market impact of employer decisions to self-insure and recommendations for mitigating trend
3. Survey of benefits offered in existing high-deductible plans in the Vermont small group health insurance market and their relation to federal cost-sharing requirements

Section 3: Health Insurance Market Reform - Analysis of the Impact of the Exchange on the Commercial Insurance Market Outside the Exchange		
Deliverable	Due Date	Sub-Project Budget Allocation
Work plan	2/17/2012	5%
Market impact of employers dropping coverage	8/15/2012	25%
Market impact of employer decisions to self-insure	8/15/2012	25%
Survey of benefits in HDHPs (1st draft)	3/31/2012	10%
Glide path for rate impacts on specific groups (high-level description of options) (1st draft)	3/9/2012	35%

B. Risk-Leveling Programs

The ACA requires implementation of three risk-leveling programs: a temporary three-year reinsurance

program, a permanent risk adjustment program, and a risk corridor program to be administered by HHS.

Contractor will:

- Advise State regarding any Vermont law changes necessary to meet federal risk-leveling program requirements and standards
- Survey existing risk-leveling mechanisms and provide recommendations about which are the most successful in their markets and which would be most successful in the State
- Advise whether it would be more advantageous for the State to operate the reinsurance program or defer operation to the federal government

Deliverables

1. Report documenting existing state and market risk adjustment mechanisms
2. Report recommending whether or not state should administer risk adjustment and if so, what basic approach should be followed?
3. Implementation plan documenting key steps including administrative cost estimates

Section 3: Health Insurance Market Reform - Risk-Leveling Programs		
Deliverable	Due Date	Sub-Project Budget Allocation
Work plan	2/17/2012	0%
Report documenting existing state and market risk adjustment	4/1/2012	25%
Report recommending whether or not state should administer risk adjustment and if so, what basic approach should be followed	5/1/2012	25%
Implementation plan	5/1/2012	50%

C. Certification of Qualified Health Plans (QHPs)

The ACA requires each state exchange to develop a process for certifying qualified health plans (QHPs).

Contractor will:

- Provide to the State a survey of Federal and state requirements for QHPs, including possible administrative challenges related to these requirements
- Develop draft QHP certification standards, including those for the “best interest” test
- Develop standards for recertifying and decertifying plans
- Determine timing and administrative processes, information flows, resources, and funding needed to qualify QHPs, with particular attention to the initial qualification of plans
- Develop any needed applications, contracts, or other materials for issuers of QHPs.

Deliverables

1. Survey of federal and state requirements
2. QHP certification, recertification, and decertification standards

3. Process flow and necessary resources document
4. Questionnaires and contracts

Section 3: Health Insurance Market Reform - Certification of Qualified Health Plans (QHPs)		
Deliverable	Due Date	Sub-Project Budget Allocation
Work plan	3/10/2012	10%
Survey of federal & state requirements	4/15/2012	10%
QHP certification standards	6/30/2012	30%
Process flow & resource needs	6/15/2012	25%
Questionnaires & contracts	9/1/2012	25%

D. Consumer Satisfaction Surveys

The ACA requires every Exchange to conduct periodic consumer satisfaction surveys. Contractor will deliver a consumer satisfaction survey implementation plan that includes:

- Appropriate goals and objectives for health care consumer satisfaction surveys
- Appropriate consumer satisfaction standards and measures, including assessment of standards used by HEDIS and other satisfaction measurement organizations
- Proposed survey process and model survey instruments
- Proposals for disseminating survey results, including website postings and reporting to the federal government.

Deliverable

Implementation plan

Section 3: Health Insurance Market Reform - Consumer Satisfaction Surveys		
Deliverable	Due Date	Sub-Project Budget Allocation
Work plan	6/1/2012	25%
Implementation plan	8/30/2012	75%

E. QHP Plan Design

Exchanges may only offer qualified health plans (QHPs) to consumers; QHPs must meet federal and state standards.

Essential Health Benefits Analysis:

Phase 1: High level comparison of the benefits offered under each benchmark plan

Scope

State’s Exchange Planning Grant vendor will complete a high level analysis of the possible benchmark plans and provide a high level report comparing the plans by mid-February. Contractor will use this report to complete Phases 2 and 3 as described below.

Phase 2: Detailed comparison of the benefits offered under each benchmark plan

Building on Phase 1, Phase 2 will do a more detailed comparison of the benefits offered under each of the benchmark plans. The detailed comparison will include looking at differences both at a more detailed benefit level as well as putting a quantitative value on the differences. Specifically, this phase would include the following scope of work:

1. If needed, develop a more detailed analysis of the benefits offered under each of the benchmark plans. Detail may include any information that was not readily or consistently available for all benchmark plans in Phase 1.

2. Price the differences between benefit designs: Using a standardized population, Contractor can provide Vermont with the pricing impact associated with the variations between the seven benchmark plan options (the 3 federal plans are excluded). Pricing variations associated with health insurance options for federal employees is expected to require the most time because we anticipate that it will require analyzing state-specific mandates in detail. As mentioned previously, deciding whether or not analysis is needed with regard to the federal employee plan will be a critical first step.

In order to price the benefit differentials, Contractor will rely on the following data sources:

- Contractor actuarial benefit pricing model, assuming cost-sharing consistent with standard cost-sharing, such as would be found in a Silver plan.
- Vermont’s All Payers Claims Database (APCD) data. For example, if the Vermont state employee health plan has a particular benefit that the largest small group plans in Vermont do not have, we can determine a detailed pricing estimate for that particular benefit based on claims experience for plans with that same benefit in the APCD.
- For variations in design that are not procedure or diagnosis-based, Contractor will use publicly available information and general industry knowledge to develop pricing impact estimates. Such coverage examples may include particular plan-specific protocols used in the management of care.

Deliverables

1. Report that compares the benefits of the benchmark plans at a more detailed level, including the following:
 - a. The pricing impact of each of the benefit differences under the benchmark plans.
 - b. A recommendation for the benchmark plan for Vermont to use as the EHB benchmark with any rationale for the recommendation.

Section 3: Health Insurance Market Reform - QHP Plan Design Phase 2		
Deliverable	Due Date	Sub-Project Budget Allocation
Report on detailed pricing differences under each of the benchmark plan options and a recommendation for the benchmark plan	3/30/2012	100%

Phase 3

1. Request data from health insurance companies on their current plan designs with corresponding membership. Contractor will develop a carrier and broker interview protocol and a data call template that can be re-purposed for Vermont's needs. BISHCA has issued a data call that may be somewhat useful in supplying relevant data, but Contractor will need to review the data to see if it is sufficiently detailed for assessing the variation in existing plan designs, or whether a new data call is needed. As the most recent benefit design trends are the most relevant in any case, it may be prudent to supplement older data with new data for 2012.
2. Using the data provided by the health insurers, Contractor will produce an assessment of the overall market distribution by actuarial value tier and level of dispersion across the actuarial spectrum. In order to assign actuarial values to the current plans in the market, Contractor will input plan design specifications into the Contractor's actuarial pricing model, which outputs the associated actuarial value by plan.
3. Contractor will structure a set of in-depth interviews with agents/brokers and knowledgeable staff from employer associations at a time acceptable to the State in order to be able to describe the most popular offerings in non-group and small-group.
4. Based on information obtained in the data request and market interviews, Contractor will develop a set of benefits plans that correspond to each of Vermont's permitted cost-sharing levels. Further analysis will be done to understand the pricing impact and percent of members impacted as a result of moving current plans to an appropriate and corresponding plan design from the standard set.

Deliverables

1. Distribute data call to the primary health insurers in Vermont.
2. On a regularly scheduled meeting with the State, Contractor will discuss key findings of the data received through the data call, including the most common plans in both the small group and non-group markets.
3. Contractor will provide an interim report to the State that shows the current market distribution of plans by actuarial value tier.
4. Contractor will also provide an interim report to the State summarizing the results of the market research.
5. A report will be delivered to the State that includes the information from the interim reports, the set of recommended standard plans by tier, and the impact of the standard plans on the current market.

Section 3: Health Insurance Market Reform - QHP Plan Design Phase 3		
Deliverable	Due Date	Sub-Project Budget Allocation
Distribute data call to health insurers	3/1/2012	5%
Verbal communication to the State regarding the most common plan designs	4/15/2012	15%
Interim report to the State regarding current distribution of plan by actuarial tier	5/15/2012	30%
Interim report to the State summarizing the market research	TBD based on timing deemed appropriate by the State	20%
Draft report	6/1/2012 or 1 month after the market research report is delivered whichever is later	15%
Final report	6/30/2012 or one week after feedback from the State regarding draft report, whichever is sooner	15%

Project Management

Contractor will be providing overall project management including but not limited to the following tasks:

- Participation in regularly scheduled meetings to provide updates to the State regarding overall project status.
- Written high-level summary reports indicating progress of overall project.
- Continuous review and assessment of goals, timelines, deliverables, and milestones across projects.
- Identification, communication, and management of any potential risks or scope creep.
- Coordination of work of subcontractors working with Contractor, including quality control of reports and meeting coordination.
- Coordination with reports and work performed by other consultants hired by the State that could be leveraged with work performed by Contractor and its subcontractors.
- Prepare reports at the request of the State regarding work plan, timelines, and/or budget.
- Assist state with any scheduling or communication needs related to the project.

Budget:

Maximum of 20 hrs/week for at a blended rate of \$232/hr for 32 weeks = \$148,480. Payment will be made on an as-incurred basis up to the maximum of \$148,480.

Assistance to the State’s Stakeholder Involvement and Outreach/Education Contractor (GMMB, Inc) on design of navigator program

Contractor will assist GMMB as needed, including recommendations on:

- whether brokers should be navigators
- preferred compensation plan for navigators/brokers
- system for evaluating the effectiveness of navigators/brokers.

Budget:

Maximum of 250 hours at a blended hourly rate of \$300.00 for a total budget of \$75,000.

Payment will be made on an as-incurred basis up to the maximum of \$75,000.

Section 4: Ad Hoc Tasks

During the course of this contract, the State and Contractor may identify additional tasks needed to be performed. The State is allowing for up to 400 hours in addition to those needed for the tasks described earlier in the statement of work. Upon identifying such a task, the Contractor will submit a written scope of work, including the cost of such work, and a timeline for completion. The State must approve the scope of work before Contractor may proceed with the task. Work under this section may not exceed the dollar amount specified in Attachment B, Payment Provisions. The contract may be amended as needed by written agreement.

Budget:

400 hours at an estimated average hourly rate of \$275 = \$110,000

ATTACHMENT B PAYMENT PROVISIONS

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

1. Payment Schedule: Sections I, II & III.

Payment shall be issued to the Contractor on a fixed fee basis based on the submission and acceptance of each deliverable. Reasonable expenses for State approved travel will be reimbursed on an as-incurred basis at the state required per diems and limits as outlined in Bulletin 3.4. Contractor will not be reimbursed for other expenses, including supplies, benefits or insurance. Contractor shall invoice the State upon submission of each final deliverable listed within the Deliverable Fee Schedule contained in this attachment.

2. Payment Schedule: Section IV - Ad Hoc Tasks

Upon the State's request the Contractor shall perform additional tasks in accordance with the scope of work as found necessary in achievement of the goals set out under the Level 1 Exchange Establishment Grant. Each additional task will be reduced to writing contained in a scope of work and submitted to the State for approval prior to commencement of any additional tasks. The approved scope of work must include a total cost not to be exceeded for each approved task area. Contractor shall submit monthly invoices that include the number of hours worked by staff, as well as a description of the work performed.

Contractor shall be reimbursed a single, blended rate of \$275 per hour, inclusive of all travel and other expenses. Contractor will not be reimbursed for other expenses, including travel, supplies, benefits or insurance. A total of 400 hours are authorized for performance of additional work, subject to approved scopes of work.

3. Failure to meet a performance measure/deliverable date due to fault by the Contractor, in subsections where specific deliverables and dates are defined and where the work is not on-going or "ad hoc", the deliverable payment shall result in a 10% deduction from the amount allowed for that specific performance measure/deliverable. Should the Contractor and the State prior to the date of delivery agree that such delay was the result of circumstances beyond the control of the Contractor this provision will be waived and reduced to writing for inclusion in the contract file.

4. Invoices shall be submitted on the Contractor's official letterhead, signed by an authorized representative of the Contractors organization, reference this contract's number and be submitted to:

Business Office, Contracting Unit
Department of Vermont Health Access
312 Hurricane Lane
Williston, VT 054953

5. Total maximum payable under this contract shall not exceed \$1,499,987.64.

Fee Schedule	
Deliverable	Amount
Section 1: Exchange Operations/Business Functions	
Call Center	\$82,578.50
Financial Management	\$56,720.00
Program Integrity	\$61,206.00
Exchange Staffing	\$14,695.00
Exchange Evaluation	\$43,855.00
Level 2 Establishment Grant Application	\$279,511.00
	\$538,565.50
Section 2: SHOP/Individual & Employee Responsibility/Enrollment	
SHOP Exchange	\$128,670.00
Individual and Employer Responsibility Determinations	\$41,780.00
Enrollment in Qualified Health Plans	\$24,907.14
	\$195,357.14
Section 3: Health Insurance Market Reform	
Analysis of the Impact of the Exchange on the Commercial Insurance Market Outside the Exchange	\$60,500.00
Risk-Leveling Programs	\$57,143.00
Certification of Qualified Health Plans (QHPs)	\$46,060.00
Consumer Satisfaction Surveys	\$22,655.00
	\$186,358.00
QHP Plan Design	
Phase 2	\$63,368.00
Phase 3	\$147,859.00
Project Management	\$148,480.00
Assistance to GMMB Inc. on design of navigator program	\$75,000.00
	\$434,707.00
Section 4: Ad Hoc Tasks	
	\$110,000.00
Travel Allowance	
	\$35,000.00
Total	\$1,499,987.64

ATTACHMENT C CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

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

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

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

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

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

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

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

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

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

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

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

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

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

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of N/A per occurrence, and N/A aggregate.

8. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.

9. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

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

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

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

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

11. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

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

13. Taxes Due to the State:

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

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

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

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

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

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

Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of or reorganization of the Party.

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

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

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

ATTACHMENT E BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between **the State of Vermont Agency of Human Services operating by and through its Department, Office, or Division of Vermont Health Access** (“Covered Entity”) and **Wakely Consulting Group, Inc.** as of **February 10, 2012** (“Effective Date”). This Agreement supplements and is made a part of the Contract to which it is an attachment.

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

The parties agree as follows:

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

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

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

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

2. Permitted and Required Uses/Disclosures of PHI.

2.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying contract with Covered Entity. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

2.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents (including subcontractors) in accordance with Sections 8 and 16 or (b) as otherwise permitted by Section 3.

3. Business Activities. Business Associate may use PHI received in its capacity as a “Business Associate” to Covered Entity if necessary for Business Associate’s proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as “Business Associate” to Covered Entity for Business Associate’s proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if (a) Business Associate obtains reasonable written assurances via a written agreement from the person to

whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person and (b) the person notifies Business Associate, within three business days (who in turn will notify Covered Entity within three business days after receiving notice of a Breach as specified in Section 5.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in this Section must be of the minimum amount of PHI necessary to accomplish such purposes.

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

5. Documenting and Reporting Breaches.

5.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI as soon as it (or any of its employees or agents) become aware of any such Breach, and in no case later than three (3) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

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

5.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce does not pose a significant risk of harm to the affected individuals, it shall document its assessment of risk. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low risk of harm. When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity.

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

7. Providing Notice of Breaches.

7.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR §164.402, and if requested by Covered Entity, Business Associate shall provide

notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate.

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

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

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

8. Agreements by Third Parties. Business Associate shall ensure that any agent (including a subcontractor) to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity agrees in a written agreement to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. For example, the written contract must include those restrictions and conditions set forth in Section 14. Business Associate must enter into the written agreement before any use or disclosure of PHI by such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of PHI to any agent without the prior written consent of Covered Entity.

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

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

11. Accounting of Disclosures. Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business

Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

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

13. Termination.

13.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 17.7.

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

14. Return/Destruction of PHI.

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

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

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

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

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

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

16.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an agent, including a subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than three (3) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

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

17. Miscellaneous.

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

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

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

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

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

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

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

(Rev: 1/31/11)

ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.

2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org

3. **Medicaid Program Contractors:**

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

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

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

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

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

Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency.** The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil

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

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

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

7. **Privacy and Security Standards.**

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

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

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

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

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911(c)(3)).

9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or

exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

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

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

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

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

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

12. **Computing and Communication:** The Contractor shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the

Contractor as part of this agreement. Options include, but are not limited to:

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

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

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

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

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

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

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

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

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