

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Covisint Corporation, with a principal place of business in Detroit, Michigan (hereafter called "Contractor"). The Contractor's form of business organization is a corporation. The Contractor's address is 26533 Evergreen Road, Suite 500, Southfield, MI, 48076. 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 licensing of the source code, software and documentation for DocSite in perpetuity to the State. The detailed source code license agreement for DocSite is contained in Exhibit 2.
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 **\$1,000,000.**
4. **Contract Term.** The period of Contractor's transition services shall begin on December 11, 2015 ("Effective Date") and end on December 18, 2015, provided however, that the State shall have a perpetual license to use the DocSite software procured hereunder, as governed by DocSite Source Code License Agreement attached hereto as Exhibit 2.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office is required.

Approval by the Secretary of Administration is required.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 60 days in advance. Notwithstanding this provision, if a governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this contract are provided, is not in compliance with State and Federal law or is operating with deficiencies the State may terminate this contract immediately and notify the Contractor accordingly. Also, 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. **The contacts for this award are as follows:**

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>	<u>For the Contractor</u>
Name:	Natalie Elvidge	Tim Tremblay	Joseph Carlson
Phone #:	802-879-7956	(802) 654-8923	248-483-2164
E-mail:	Natalie.Elvidge@state.vt.us	timothy.tremblay@vermont.gov	jcarlson@covisint.com

9. **Attachments.** This contract consists of 39 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
- Exhibit 1 – Subcontractor Consent Form
- Exhibit 2 - DocSite Source Code License Agreement
- Exhibit 3 - Deliverable Acceptance
- Other Attachments (if any)

The order of precedence of documents shall be as follows:

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

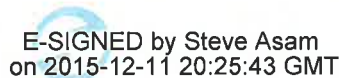
WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

STEVEN COSTANTINO, COMMISSIONER
312 Hurricane Lane, Suite 201
Williston, VT 05495-2087
Phone: 802-879-5901
Email: Steven.Costantino@state.vt.us

DATE


E-SIGNED by Steve Asam
on 2015-12-11 20:25:43 GMT

December 11, 2015

STEVE ASAM, SVP
26533 Evergreen Road, Suite 500
Southfield, MI 48075
Phone: 248-483-2035
Email: sasam@covisint.com

DATE

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

The purpose of this contract is to deliver a perpetual source code, software and documentation license for DocSite to the State. The Contractor agrees to complete the following tasks:

Task 1: Provide Perpetual Source Code, Software and Documentation License and Deliver an Operational Instance of DocSite.

The Contractor shall deliver an operational instance of the DocSite system (the "System"), hosted in a data center designated by the State, and the Contractor shall transfer ownership and use of the instance in accordance with the perpetual source code license (the terms of which are contained in Exhibit 2 of this agreement).

Upon delivery, the State shall have five (5) business days to validate that the System works as expected based on the following success criteria:

1. Manual entry users can successfully log in to the System, navigate the System and enter data. Manual entry users include:
 - a. Support and Services at Home (SASH) program users
 - b. Community Health Team (CHT) program users
 - c. Tobacco Cessation Counselor (TCC) program users
 - d. Self-Management Support Programs (SMSP) users
2. The full DocSite database can be successfully extracted.

Upon validation of these success criteria, the State shall take ownership of the fully operational instance of DocSite and shall comply with all terms of the source code license agreement as detailed in Exhibit 2 of this agreement.

Deliverables:

The Contractor shall:

1. Deliver one copy of Licensed Software (DocSite) to State or designee within five (5) business days of contract start date, inclusive of access to source code and documentation.
2. Deliverable 1 above is subject to review, validation and acceptance by the State within five (5) business days of delivery ("deliverable review period"), based on the success criteria as defined above in Task 1. The Contractor shall make the appropriate resources available from 8:00 AM -5:00 PM, Eastern Standard Time for the deliverable review period to address questions from the State or its designee.
 - a. If the Contractor is unavailable during the deliverable review period or if the State or its designee deems the delivered materials incomplete or flawed at any time during the deliverable review period, then the applicable deliverables will be rejected in writing with a list of specific issues that need to be fixed and subject to review based upon a remediation plan that the State and the Contractor agree upon within 2 business days of the rejection notice. The remediation plan and its execution shall be limited to the issues identified in writing by the State and may not include additional issues that were not initially identified and communicated during the deliverable review period, unless the State identifies additional issues encountered during validation of the remediated issues caused by the remediation solution provided by Covisint to fix the issue.

- b. In the event that the State fails to provide acceptance or rejection within the deliverable review period five (5) business days after delivery, the Contractor shall notify the State in writing requesting formal acceptance or rejection of the deliverables within 24 hours. Parties notified shall include the Blueprint Executive Director and Assistant Director, the Business Office contract manager, and the Blueprint Migration Project Manager. If the State does not respond to the Contractor's written request within 24 hours, then the scope and deliverables of this Task 1 shall be deemed accepted.

Subcontractor Requirements: If the Contractor chooses to subcontract work under this agreement, the Contractor must first fill out and submit the Request for Approval to Subcontract Form (Exhibit 1 – Required Forms) in order to seek approval from the State prior to signing an agreement with a third party. Upon receipt of the Request for Approval to Subcontract Form, the State shall review and respond within five (5) business days. Under no circumstance shall the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Request for Approval to Subcontract Form to:

Natalie Elvidge
Natalie.Elvidge@state.vt.us

Should the status of any third party or Sub recipient change, the Contractor is responsible for updating the State within fourteen (14) days of said change.

ATTACHMENT B PAYMENT PROVISIONS

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually performed as specified in Attachment A up to the maximum allowable amount specified in this agreement. State of Vermont payment terms are Net 0 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. License Fees. In consideration for delivery of a System acceptable to the State and the rights granted to the State ("Licensee") under Exhibit 2 of this agreement, the State shall pay the Contractor ("Licensor") a one-time source code license fee for DocSite of **\$1,000,000** upon State acceptance of deliverables for Task #1 of Attachment A via a Deliverable Acceptance form (Exhibit 3) signed by the Blueprint Executive Director or designated Assistant Director.
2. The Contractor shall submit one invoice with a current date of submission, a unique invoice number, the contract number, dates of service, and total charges
3. The State will have five (5) business days as defined in Deliverable #1 to acknowledge the final deliverables/products or to reject them. If the deliverables meet the established acceptance/success criteria as outlined in Task #1, Deliverable 1 of Attachment A, the State Blueprint Executive Director or Assistant Director will sign the Deliverable Acceptance form (Exhibit 3) and email it back to the Contractor.

Acceptance of the deliverables/products by the State via Deliverable Acceptance form (Exhibit 3) shall represent the Contractor's fulfillment of the deliverable(s) for payment.

4. Taxes. All Fees and other amounts payable by the State under this Agreement are exclusive of taxes and similar assessments. Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished to the Contractor upon written request covering taxable items. The Contractor agrees to pay all Vermont taxes which may be due as a result of this Agreement.
5. All reports and invoices related to this contract should be submitted in electronic format to:

Natalie Elvidge
Natalie.Elvidge@state.vt.us

Tim Tremblay
Contract Manager
timothy.tremblay@vermont.gov

6. The State reserves the right to withhold part or all of the contract funds if the State does not receive timely documentation of the successful completion of contract deliverables outlined in Attachment A.
7. The License fee payable hereunder is inclusive of all Contractor expenses, and Contractor will not be reimbursed for other expenses, including travel, supplies, benefits, or insurance.
8. The total maximum amount payable under this contract shall not exceed **\$1,000,000**.

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

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

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

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

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

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

Workers Compensation: With respect to all operations performed, the Party shall carry workers'

compensation insurance in accordance with the laws of the State of Vermont.

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

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

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

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

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

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

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

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain Technology Professional Liability Insurance for any and all services performed under this Agreement, with minimum coverage of \$2,000,000 per occurrence, and \$5,000,000 aggregate, 1st party breach coverage \$1,000,000.

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

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

10. **Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or

characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

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

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

13. Taxes Due to the State:

- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

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

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

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

- 16. No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
- 17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
- 18. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.
- Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at:
<http://bgs.vermont.gov/purchasing/debarment>
- 19. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- 20. Internal Controls:** In the case that this Agreement is an award that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- 21. Mandatory Disclosures:** In the case that this Agreement is an award funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.
- 22. Conflict of Interest:** Party must disclose in writing any potential conflict of interest in accordance with Uniform Guidance §200.112, Bulletin 5 Section X and Bulletin 3.5 Section IV.B.

(End of Standard Provisions, State of Vermont – Attachment C - 9-1-2015_rev)

**ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its **Department of Vermont Health Access (DVHA)** (“Covered Entity”) and **Covisint Corporation** (“Business Associate”) as of the date of last signature (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

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

The parties agree as follows:

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

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

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

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

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

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

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

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

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

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

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

3. Permitted and Required Uses/Disclosures of PHI.

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

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

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

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

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

6. Documenting and Reporting Breaches.

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes

aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

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

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

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

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

8. **Providing Notice of Breaches.**

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

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

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

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

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

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

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

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

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

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

Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

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

14. Termination.

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 18.8.

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

15. Return/Destruction of PHI.

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

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

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

requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

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

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

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

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

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

18. Miscellaneous.

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

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

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

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

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

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

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

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

(Rev: 5/5/15)

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.

Department of Vermont Health Access Request for Approval to Subcontract

Date of Request: _____

Original Contractor Name:	_____	Contract #:	_____
Address:	_____		
Phone Number:	_____		
Contact Person:	_____		
Agreement #:	_____	Signature:	_____

Subcontractor Name: _____
Address: _____
Phone Number: _____
Contact Person: _____
Scope of Subcontracted Services: _____

Is any portion of the work being outsourced outside of the United States? **YES** **NO**
(Note to Business Office: If Yes, do not proceed further with approval until reviewed with Finance & Mgmt)

Dollar Amount of Subcontracted Services: \$ _____
Date Range for Subcontracted Services: Start: _____ End: _____

DVHA Contact Person:	_____	Signature:	_____
Phone Number:	_____		

Business Office Review

Comments: _____
Approval: _____ Title: _____ Date: _____

Required: Contractor cannot subcontract until they receive this signed approval from the State of Vermont. The following language must be included by the contractor in all subcontracting agreements.

Language to be included from State of Vermont Bulletin 3.5 in all subcontracting agreements:

10. 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.

11. Taxes Due to the State:

- e. 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.
- f. 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.
- g. 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.
- h. 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.

23. 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.

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

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

EXHIBIT 2: DOCSITE SOURCE CODE LICENSE AGREEMENT

This Software License Agreement (the "**License Agreement**"), effective as of completion and Delivery Acceptance of Task #1 as defined in this License Agreement (the "**Effective Date**"), is entered into by and between Covisint Corporation, a Michigan corporation having its principal place of business at 26533 Evergreen Road, Suite 500, Southfield, MI 48076 ("**Licensor**") and State of Vermont, Department of Vermont Health Access having its principal place of business at 312 Hurricane Lane, Williston, VT 05495 ("**Licensee**" or "State," together with Licensor, the "**Parties**", and each, a "**Party**").

WHEREAS, Licensor is the entire legal and beneficial owner of the Licensed Software, and desires to license the Licensed Software to Licensee; and

WHEREAS, Licensee desires to obtain a license to use the Licensed Software for its internal business purposes, subject to the terms and conditions of this License Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Capitalized terms have the meanings set forth or referred to in this **Section 1**:

"**Action**" has the meaning set forth in **Section 6.4(d)**.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person.

"**Authorized User**" means those individuals authorized to use the Licensed Software by Licensee within Licensee's ordinary business operations.

"**Business Day**" means a day other than a Saturday, Sunday or other day on which commercial banks in Detroit, Michigan are authorized or required by Law to be closed for business.

"**Confidential Information**" has the meaning set forth in **Section 5.1**.

"**Controlled Technology**" means any software, documentation, technology or other technical data, or any products that include or use any of the foregoing, the export, re-export or release of which to certain jurisdictions or countries is prohibited or requires an export license or other governmental approval, under any Law, including the US Export Administration Act and its associated regulations.

"**Disclosing Party**" has the meaning set forth in **Section 5.1**.

"**Documentation**" means any and all manuals, instructions and other documents and materials that Licensor provides or makes available to Licensee in any form or medium which describe the functionality, components, features or requirements of the Licensed Software, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

"**Effective Date**" has the meaning set forth in the preamble.

"**Force Majeure Event**" has the meaning set forth in **Section 12**.

"**Indemnitee**" has the meaning set forth in **Section 9.2**.

"**Indemnitor**" has the meaning set forth in **Section 9.2**.

"**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"**Licensed Software**" means DocSite.

"**Licensee**" has the meaning set forth in the preamble.

"**Licensee Indemnitee**" has the meaning set forth in **Section 9.1**.

"**Loss**" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"**Parties**" has the meaning set forth in the preamble.

"**Party**" has the meaning set forth in the preamble.

"**Permitted Use**" means use of the Licensed Software by an Authorized User for the benefit of Licensee in the ordinary course of its internal business operations or by Sublicensee for Sublicensee's internal business operations.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

"**Receiving Party**" has the meaning set forth in **Section 5.1**.

"**Representatives**" means, with respect to a Party, that Party's and its Affiliates' employees, officers, directors, consultants, agents, independent contractors, service providers, permitted sublicensees, subcontractors and legal advisors

"**Term**" has the meaning set forth in **Section 7.1**

"**Sublicensee**" means a party that Licensee sublicenses access to the Licensed Software for Sublicensee's internal business operations with the prior written consent of Licensor.

"**Source Code**" means the alphanumeric text in which most computer software is originally written, which is saved in one or more files, describes sequences of specific actions to be performed by the computer. Source code files are translated by a special-purpose software program, such as a compiler or assembler, into object code that can be processed directly by a computer or other device to control its operation.

“State Intellectual Property” has the meaning set forth in **Section 6.2**

"Third-Party Software" means software that is not proprietary to Licensor.

2. License.

2.1 License Grant. Subject to the terms and conditions of this License Agreement, and conditioned on Licensee's and its Authorized Users' compliance therewith, Licensor hereby grants to Licensee a paid-in-full, perpetual, non-exclusive, and non-transferable, limited license to use the Licensed Software and Documentation solely for the Permitted Use in the United States.

2.2 Scope of Licensed Access and Use. Licensee may install, use, and run as many copies of the Licensed Software as are needed for internal business operations (including, but not limited to, testing, disaster recovery, or archival purposes) and for use by an unlimited number of Authorized Users. Any copy of the Licensed Software made by Licensee: (a) will remain the exclusive property of Licensor; (b) be subject to the terms and conditions of this License Agreement; and (c) must include all copyright or other Intellectual Property Rights notices contained in the original.

2.3 Source Code. Licensor grants Licensee access to the Licensed Software's Source Code for the purpose of the Licensee's maintenance and support of the Licensed Software. Licensee shall have the right to modify the Source Code of the Licensed Software in a way to create a derivative work or improvements, subject to co-ownership of Licensor of any derivative works or improvements so created. Any derivative work so created by the Licensee may be used by the Licensee for any internal or commercial purpose in compliance with this License Agreement.

2.4 Third-party Software. The Licensed Software does not include the Third-party Software listed below, which is required to permit the Licensed Software to operate. Licensee shall purchase appropriate licenses to the Third-party Software, which includes:

Application - Telerik RadControls for ASP.net /MVC
Application - ActiveReports
Database- RxNorm
Database- Loinc
Database-NDC
Medispan- (for Allergy)

2.5 Licensee believes other organizations may benefit from a use of the Licensed Software similar to the Licensee's use. Provided Licensor can enter into an agreement with an appropriate third-party to sell to another organization, Licensor agrees in principle to make the Licensed Software available to another organization that will use the Licensed Software in similar fashion to Licensee's use.

3. Use Restrictions. Except as this License Agreement expressly permits, and subject to **Section 2.3**, Source Code, Licensee shall not permit any other Person to:

- (a) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Licensed Software to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (b) remove, delete, efface, alter, obscure, translate, combine, supplement or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks or serial numbers on or relating to any copy of the Licensed Software or Documentation, provided however, Licensee may rebrand the Licensed Software for its own internal business purposes;
- (c) use the Licensed Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable Law;
- (d) use the Licensed Software for purposes of: (i) benchmarking or competitive analysis of the Licensed Software; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to Licensor's detriment or commercial disadvantage; or
- (e) use the Licensed Software or Documentation other than for the Permitted Use or in any manner or for any purpose or application not expressly permitted by this License Agreement.

4. Maintenance. Licensee understands that Licensor has no intention of updating the Licensed Software, and Licensee agrees that Licensor has no obligation to provide Licensee with any maintenance, support of, updates to, or other fixes to Licensed Software beyond the transition support outlined in Attachment A of this agreement.

5. Confidentiality.

5.1 Confidentiality of Licensor Information. In connection with this License Agreement each Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party") Confidential Information. Except as set forth herein, Confidential Information means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary. The Licensor acknowledges and agrees that this License and any and all Licensor information obtained by the State in connection with this License are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Licensor, and which gives the Licensor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Licensor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Licensor information. Licensor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Licensor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production.

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

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

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

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

5.3 Exclusions and Exceptions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this License Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this License Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

5.4 Compelled Disclosures. If the Disclosing Party waives compliance or, after providing the notice required under **Section 5.1** or **5.2**, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

6. Intellectual Property Rights.

6.1 Intellectual Property Ownership. Licensee acknowledges and agrees that:

- (a) the Licensed Software and Documentation ("Licensor Intellectual Property"), are licensed, not sold, to Licensee by Licensor and Licensee does not and will not have or acquire under or in

connection with this License Agreement any ownership interest in the Licensed Software or Documentation, or, except as set forth above with respect to derivative works, in any related Intellectual Property Rights; and

- (b) Licensor is and will remain the sole and exclusive owner of all right, title and interest in and to the Licensed Software and Documentation, and, except as set forth above with respect to derivative works, all Intellectual Property Rights relating thereto, subject only to the rights of third parties in the limited license granted to Licensee under this License Agreement.

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

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

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

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

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

6.4 Licensee Cooperation and Notice of Infringement. Licensee shall, during the Term:

- (a) take all reasonable measures to safeguard the Licensed Software and Documentation (including all copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access;
- (b) at Licensor's expense, take all such steps as Licensor may reasonably require to assist Licensor in maintaining the validity, enforceability and Licensor's ownership of the Intellectual Property Rights in the Licensed Software and Documentation;
- (c) promptly notify Licensor in writing if Licensee becomes aware of:
 - (i) any actual or suspected infringement, misappropriation or other violation of Licensor's Intellectual Property Rights in or relating to the Licensed Software or Documentation; or
 - (ii) any claim that the Licensed Software or Documentation, including any production, use, marketing, sale or other disposition of the Licensed Software or Documentation, in whole or in part, infringes, misappropriates or otherwise violates the Intellectual Property Rights or other rights of any Person; and
- (d) reasonably cooperate with and assist Licensor, at Licensor's expense, in all reasonable ways in the conduct of any claim, suit, action or proceeding (each, an "**Action**") by Licensor to prevent or abate any actual or threatened infringement, misappropriation or violation of Licensor's rights in, and to attempt to resolve any claims relating to, the Licensed Software or Documentation.

6.5 No Implied Rights. Except for the limited rights, licenses and co-ownership rights in derivative materials expressly granted under this License Agreement, nothing in this License Agreement grants, by implication, waiver, estoppel or otherwise, to Licensee or any third party any Intellectual Property Rights or other right, title, or interest in or to any of the Licensed Software or Documentation.

7. Term and Termination.

7.1 Term. The term of this License Agreement is perpetual unless terminated earlier pursuant to any of the License Agreement's express provisions.

7.2 Termination. This License Agreement may be terminated at any time:

- (a) by a Party, if the other Party materially breaches this License Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach;
- (b) by Licensor, effective immediately, if the Licensee: (i) is dissolved or liquidated or takes any corporate action for such purpose; (ii) becomes insolvent or is generally unable to pay its debts as they become due; (iii) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency Law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

7.3 Effect of Termination or Expiration. On the termination of this License Agreement by Licensor for cause, Licensee shall:

- (a) immediately cease all use of and other activities with respect to the Licensed Software and Documentation other than those described in Section 7.3(b) below;
- (b) Within 15 days deliver to Licensor, or at Licensor's written request destroy, and permanently erase from all devices and systems Licensee directly or indirectly controls, the Licensed Software, the Documentation and the Licensor's Confidential Information, including all documents, files and tangible materials (and any partial and complete copies) containing, reflecting, incorporating or based on any of the foregoing, whether or not modified or merged into other materials; and
- (c) Certify to Licensor in a signed written instrument that it has complied with the requirements of this Section 7.3.

7.4 Licensor Business Continuity; Licensor Bankruptcy.

- (a) Licensor acknowledges and agrees that (i) if Licensor applies for or consents to the appointment of a trustee, receiver or other custodian or makes a general assignment for the benefit of its creditors, or (ii) in the event of any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceedings are commenced by or against Licensor and, as to such case or proceeding not commenced by Licensor, is acquiesced in or remains undismissed for sixty (60) days; or (iii) if Licensor ceases doing business in the normal course, then Licensor shall immediately upon request of the State, unconditionally and irrevocably assign, transfer and convey to the State title and interest to the Licensed Software Source Code delivered to the Licensee.
- (b) Licensor acknowledges that if Licensor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this License Agreement, the State may elect to retain its rights under this License Agreement as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Licensor or the Bankruptcy Trustee, Licensor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this License Agreement.
- (c) All rights and licenses granted pursuant to any section of this License Agreement, including without limitation, all rights and licenses to use improvements or enhancements developed during this License Agreement, are intended to be, and shall be deemed to be, for purposes of § 365(n) of the Bankruptcy Code, licenses of rights to "intellectual property" as defined under § 101(35A) of the Bankruptcy Code.

7.5 Surviving Terms. The provisions set forth in the following sections, and any other right, obligation or provision under this License Agreement that, by its nature, should survive termination or expiration of this License Agreement, will survive any expiration or termination of this License Agreement: this Section 7.5, Section 1 (Definitions), Section 5 (Confidentiality), Section 6 (Intellectual Property Rights), Section 8 (Representations and Warranties), for clarity, including Section 8.7 (Disclaimer), Section 9 (Indemnification), Section 10 (Limitations of Liability) and Section 13 (Miscellaneous).

8. Representations and Warranties.

8.1 Mutual Representations and Warranties. Each Party represents, warrants and covenants to the other Party that:

- (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;
- (b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses and authorizations it grants and is required to grant under this License Agreement;
- (c) the execution of this License Agreement by its representative whose signature is set forth at the end of this License Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and
- (d) when executed and delivered by both Parties, this License Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

8.2 Limited Warranty. Subject to the limitations and conditions set forth in **Section 8.3** and **Section 8.4**, Licenser warrants to Licensee that for a period of 90 days from the Effective Date (the "**Warranty Period**"):

- (a) the Licensed Software will substantially conform in all material respects to the specifications set forth in the Documentation and as verified through Licensee testing criteria outlined in Attachments A; and
- (b) any media on which Licenser supplies the Licensed Software to Licensee will be free of material damage and defects in materials and workmanship under normal use; and
- (c) any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

8.3 Licensee Requirements. The limited warranties set forth in **Section 8.2** apply only if Licensee: (a) notifies Licenser in writing of the warranty breach before the expiration of the Warranty Period; and (b) as of the date of notification, is in compliance with all terms and conditions of this License Agreement.

8.4 Exceptions. Notwithstanding any provisions to the contrary in this License Agreement, the limited warranty set forth in **Section 8.2** shall not apply to problems arising out of or relating to:

- (a) Licensed Software, or the media on which it is provided, that is modified or damaged by Licensee or its Representatives;
- (b) any operation or use of, or other activity relating to, the Licensed Software other than as specified in the Documentation, including any incorporation in the Licensed Software of, or

combination, operation or use of the Licensed Software in or with, any technology (including any software, hardware, firmware, system or network) or service not specified for Licensee's use in the Documentation;

- (c) Licensee's or any third party's negligence, abuse, misapplication or misuse of the Licensed Software, including any use of the Licensed Software other than as specified in the Documentation;
- (d) the operation of, or access to, Licensee's or a third party's system or network;
- (e) Licensee's material breach of any material provision of this License Agreement; or
- (f) any other circumstances or causes outside of the reasonable control of Licensor (including abnormal physical or electrical stress).

8.5 Remedial Efforts. If Licensor breaches, or is alleged to have breached, any of the warranties set forth in **Section 8.2**, Licensor may, at its sole option and expense, take any of the following steps to remedy such breach:

- (a) replace any damaged or defective media on which Licensor supplied the Licensed Software;
- (b) amend, supplement or replace any incomplete or inaccurate Documentation;
- (c) repair the Licensed Software;
- (d) replace the Licensed Software with functionally equivalent software (which software will, on its replacement of the Licensed Software, constitute Licensed Software hereunder); and/or
- (e) terminate this License Agreement and refund to Licensee the share of any license fees prepaid by Licensee.

8.6 Sole Remedy. If Licensor does not cure a warranty breach or terminate this License Agreement as provided in **Section 8.5** within 90 days after Licensor's receipt of written notice of such breach, Licensee shall have the right to terminate this License Agreement as provided in **Section 7.2(a)**. Licensor shall refund to Licensee, on a pro rata basis, the share of any license fees paid by Licensee, for the remaining term of this License Agreement following the date of such termination (based upon an as if the term was 4 years). THIS SECTION 8.6 SETS FORTH THE LICENSEE'S SOLE REMEDY AND THE LICENSOR'S ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF ANY LICENSOR WARRANTY OF THE LICENSED SOFTWARE OR DOCUMENTATION SET FORTH IN THIS AGREEMENT.

8.7 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN THIS AGREEMENT, ALL LICENSED SOFTWARE, DOCUMENTATION AND OTHER PRODUCTS, INFORMATION, MATERIALS AND SERVICES PROVIDED BY LICENSOR ARE PROVIDED "AS IS." LICENSOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, LICENSOR MAKES NO

WARRANTY OF ANY KIND THAT THE LICENSED SOFTWARE OR DOCUMENTATION, OR ANY OTHER LICENSOR OR THIRD-PARTY GOODS, SERVICES, TECHNOLOGIES OR MATERIALS (INCLUDING ANY SOFTWARE OR HARDWARE), OR ANY PRODUCTS OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET LICENSEE'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES OR MATERIALS (INCLUDING ANY SOFTWARE, HARDWARE, SYSTEM OR NETWORK). ALL OPEN-SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN LICENSEE AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN-SOURCE COMPONENTS AND THIRD-PARTY MATERIALS.

9. Indemnification.

9.1 Licensor Indemnification. Licensor shall indemnify, defend and hold harmless Licensee and Licensee's officers, directors, employees, agents, permitted successors and permitted assigns (each, including Licensee, a "**Licensee Indemnitee**") from and against any and all Losses incurred by the Licensee Indemnitee arising out of or relating to any Action by a third party (other than an Affiliate of a Licensee Indemnitee) to the extent that such Losses arise from any allegation in such Action that the Licensed Software, or any use of the Licensed Software in accordance with this License Agreement (including the Documentation) infringes any U.S. Intellectual Property Right. The foregoing obligation does not apply to the extent that such Action or Losses arise from any allegation of or relating to any:

- (a) Third-party materials;
- (b) patent issued on a patent application published after the Effective Date;
- (c) incorporation by the Licensed Software of, or combination, operation or use of the Licensed Software in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by Licensor or specified for Licensee's use in the Documentation;
- (d) modification of the Licensed Software other than: (i) by Licensor in connection with this License Agreement; or (ii) with Licensor's express written authorization and in strict accordance with Licensor's written directions and specifications;
- (e) use of the Licensed Software after Licensor's notice to Licensee of such activity's alleged or actual infringement, misappropriation or other violation of a third party's rights;
- (f) negligence, abuse, misapplication or misuse of the Licensed Software or Documentation by or on behalf of Licensee, Licensee's Representatives or a third party;
- (g) use of the Licensed Software or Documentation by or on behalf of Licensee that is outside the purpose, scope or manner of use authorized by this License Agreement or in any manner contrary to Licensor's instructions or;
- (h) events or circumstances outside of Licensor's commercially reasonable control (including any third-party hardware, software or system bugs, defects or malfunctions).

9.2 Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to **Section 9.1**. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this **Section 9.2** will not relieve the Indemnitor of its obligations under this **Section 9** except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

9.3 Mitigation. If the Licensed Software, or any part of the Licensed Software, is, or in Licensor's opinion is likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Licensee's use of the Licensed Software is enjoined or threatened to be enjoined, Licensor may, at its option and sole cost and expense:

- (a) obtain the right for Licensee to continue to use the Licensed Software materially as contemplated by this License Agreement;
- (b) modify or replace the Licensed Software, in whole or in part, to seek to make the Licensed Software non-infringing, while providing materially equivalent features and functionality, and such modified or replacement software will constitute Licensed Software under this License Agreement; or
- (c) if none of the remedies set forth in the above Section 9.3(a) or Section 9.3(b) is reasonably available to Licensor, terminate this License Agreement, in its entirety or with respect to the affected part or feature of the Licensed Software, effective immediately on written notice to Licensee, in which event:
 - (i) Licensee shall cease all use of the Licensed Software and Documentation immediately on receipt of Licensor's notice; and
 - (ii) provided that Licensee fully complies with its post-termination obligations, Licensor shall promptly refund to Licensee the license fees paid by Licensee.

9.4 Sole Remedy. THIS SECTION 9.4 SETS FORTH LICENSEE'S SOLE REMEDIES AND LICENSOR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE LICENSED SOFTWARE AND DOCUMENTATION) INFRINGES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10. Limitations of Liability.

10.1 EXCLUSION OF DAMAGES. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN SECTION 10.3, IN NO EVENT WILL LICENSOR BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY (a) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS,

PRODUCTION, REVENUES OR PROFITS, (b) LOSS OF GOODWILL OR REPUTATION, (c) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY LICENSED SOFTWARE, (d) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (e) COST OF REPLACEMENT GOODS OR SERVICES, OR (e) CONSEQUENTIAL, INCIDENTAL, INDIRECT, ENHANCED, OR SPECIAL DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

10.2 CAP ON MONETARY LIABILITY. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN SECTION 10.3, IN NO EVENT WILL THE AGGREGATE LIABILITY OF LICENSOR TO THE STATE ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNT PAID UNDER THIS AGREEMENT. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

10.3 Exceptions to Limitations of Liability. The exclusions in **Section 10.1** and **Section 10.2** do not apply to Licensor's obligations under **Section 9** (Indemnification) or liability for Licensor's gross negligence or willful misconduct.

11. Export Regulation. Licensee shall not itself, or permit any other Person to, export, re-export or release, directly or indirectly any Controlled Technology to any country, jurisdiction or Person to which the export, re-export or release of Controlled Technology (a) is prohibited by applicable Law or (b) without first completing all required undertakings (including obtaining any necessary export license or other governmental approval).

12. Force Majeure Event. Neither the State nor the Licensor shall be liable to the other for any failure or delay of performance of any obligations hereunder to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control making it illegal or impossible to perform their obligations under this License Agreement, including without limitation, acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war or riots. If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this License Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

13. Miscellaneous.

13.1 Relationship of the Parties. The relationship between the parties is that of independent Licensor and Licensee. Nothing contained in this License Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other party in any manner whatsoever.

13.2 Public Announcements. Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this License Agreement or, unless expressly permitted under this License Agreement.

13.3 Notices. Any notice, request, consent, claim, demand, waiver or other communication under this License Agreement will have legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such addressee party may designate from time to time in accordance with this **Section 13.3**):

If to Licensor: Covisint Corporation
26533 Evergreen Road, Suite 500
Southfield, MI 48076
E-mail: contractrequest@covisint.com
Attention: Vice President General Counsel and Secretary

If to Licensee: Department of Vermont Health Access (DVHA)
312 Hurricane Lane, Suite 201
Williston, VT 05495-2087
Facsimile: 802- 871-3343
E-mail: natalie.elvidge@state.vt.us

Attention: State Fiscal Manager, Covisint Contract #29340

Notices sent in accordance with this **Section 13.3** will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or e-mail, (with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the 3rd day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

13.4 Interpretation. For purposes of this License Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this License Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and *vice versa*; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this License Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits,

schedules, attachments and appendices to, this License Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this License Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this License Agreement to the same extent as if they were set forth verbatim herein.

13.5 Headings. The headings in this License Agreement are for reference only and do not affect the interpretation of this License Agreement.

13.6 Entire License Agreement. This License Agreement constitutes the sole and entire agreement of the parties with respect to the subject matter of this License Agreement, which relates to the source code license for DocSite and the scope of work and payment provisions outlined in Attachments A and B of this document. The current agreement between the State and Covisint related to "the subject of providing a disease registry system", State of Vermont contract # 23945, remains in full effect until its expiration.

13.7 Assignment. Neither Party shall assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this License Agreement without the other Party's prior written consent. Any purported assignment, delegation or transfer in violation of this **Section 13.7** is void. This License Agreement is binding on and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

13.8 No Third-party Beneficiaries. This License Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this License Agreement.

13.9 Amendment and Modification; Waiver. No amendment to or modification to this License Agreement is effective unless it is in writing and signed by each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this License Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this License Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

13.10 Severability. If any provision of this License Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this License Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. On such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this License Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13.11 Governing Law; Jurisdiction. The Licensor agrees that this License Agreement shall be governed by and construed in accordance with the laws of the State of Vermont and that any action or

proceeding brought by either the State or the Licensor in connection with this License Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Licensor irrevocably submits to the jurisdiction of such court in respect of any such action or proceeding. The State shall not be liable for attorneys' fees in any proceeding.

13.12 Trial by Jury. The Licensor acknowledges and agrees that public policy prohibits the State from agreeing to arbitration and/or from waiving any right to a trial by jury.

13.13 Equitable Remedies. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under **Section 2.5** (Use Restrictions), **Section 5** (Confidentiality), **Section 6** (Intellectual Property Rights) or **Section 9** (Indemnification) of this License Agreement would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including in a restraining order, an injunction, specific performance and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

13.14 Counterparts. This License Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this License Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this License Agreement.

**EXHIBIT 3:
DELIVERABLE ACCEPTANCE**

Task #
Deliverable#
Submission Date:

Description:

Approver: Blueprint Executive Director and/or Assistant Director;
Reviewer(s): Business Office Representative:

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

APPROVER, NAME

DATE

APPROVER, SIGNATURE

DATE