

### AMENDMENT

It is agreed between the State of Vermont, Department of Vermont Health Access ( hereinafter called "State") and Wakely Consulting (hereinafter called "Contractor") with principal place of business in Tampa, FL that the contract dated November 12, 2014 is to be amended August 1, 2016 as follows:

1. **By striking out on page 1, items #3, #4 and #8, of the Base agreement, and substituting in lieu thereof the following revised items #3, #4 and #8:**
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 \$550,000.
4. **Contract Term.** The period of Contractor's performance shall begin on **November 12, 2014** and end on **June 30, 2017**.

Work performed between **August 1, 2016** and the signing or execution of this amendment that is in conformity with Attachment A may be billed under this agreement. Contractor agrees that in exchange for the consideration of the option to bill for services performed, all terms and conditions described in this agreement shall apply to any and all services performed for or on behalf of the State. Contractor agrees that by submitting invoices, bills, or otherwise seeking compensation for services performed prior to the finalization of this agreement or signing of this agreement, contractor is agreeing to the application of all terms of this contract to that period and to that work. Contractor further agrees to defend, indemnify, and hold the State harmless for any claim, dispute, non-contractual cost or charge, or any liability whatsoever, whether in law, equity, or otherwise, which arises from or is connected to the work performed prior to the execution of this agreement. Contractor further agrees that these terms apply regardless of whether the work is accepted by the State, and regardless of whether payment is issued by the State to the Contractor for the work in question.

\* \* \*

8. **Attachments.** This contract consists of 30 pages including the following attachments, which are incorporated herein:

Attachment A - Specifications of Work to be Performed  
Attachment B - Payment Provisions  
Attachment C - Customary State Contract provisions  
Attachment D - Modification of Customary Provisions of Attachment C  
Attachment E – Business Associate Agreement  
Appendix I - Required Forms  
Exhibit A – Approved Task Orders Under the Agreement

The order of precedence of documents shall be as follows:

- 1) This Document
- 2) Attachment D
- 3) Attachment C
- 4) Attachment A
- 5) Attachment B
- 6) Attachment E

- 7) Appendix I
- 8) Exhibit A

**2. Attachment A: By replacing in its entirety with the following revised version:**

**I. Scope of Work**

**A. Technical Assistance to VHCIP Sub-Grant Program Awardees.**

In early 2014, the VHCIP launched a sub-grant program to foster innovation at the provider level. The technical assistance part of the VHCIP Grant Program is a key aspect and will enhance the awards and maximize the success of the awardees projects. The program supports five different technical assistors, one of whom is the Contractor.

1. The State will assign a technical assistor to work with an awardee. The technical assistance team will:
  - a. Provide technical assistance of a specific nature (briefly described below) to grant awardees.
  - b. Work with VHCIP Staff and awardees to refine project-specific scopes of work with clear parameters and costs.
  - c. Provide detailed monthly reports of this work to VHCIP Staff.
2. Once the assignment is made, the Contractor will be paid for two services:
  - a. Assisting Grant Program awardees to develop detailed scopes of work, including cost estimates; and;
  - b. Execution of a specific scope of work for an awardee upon explicit, written approval by the State. The Contractor cannot commence any tasks under the second category of services without express, written approval of a Task Order from the State of Vermont's designated representative.
3. Pursuant to a Task Order, the Contractor may perform work in, but not limited to, the following areas:
  - a. Develop Scopes of Work with Grant Program Awardees.
    - i. The Contractor shall develop detailed scopes of work, including timeline and total cost, with awardees and the State of Vermont. The State will pay the Contractor for the time spent on the development of each scope of work.
    - ii. Once the detailed scopes of work are completed, and approved by the State of Vermont, the Contractor shall create a work-plan for providing the technical assistance necessary for all of the approved scopes of work. The State will pay the Contractor for the time spent developing the work plan.
    - iii. The Contractor shall incorporate the work plan into the monthly Task Order submitted to the State.
  - b. Provide Technical Assistance Support to Grant Program Awardees.
    - i. The Contractor shall provide consultative support to the approved Grant Program Awardees.
    - ii. The areas of consultation that may be necessary in order to accomplish this task may include, but are not limited to actuarial and financial analyses.
    - iii. When a Task Order requires technical assistance support as described in this section, the Contractor shall provide monthly reports to the State of Vermont regarding progress on each of the areas of consultation required by the Task Order. The Contractor should be prepared to consult with the State of Vermont in development of written documentation and presentations to State and CMMI in order to support this effort.
    - iv. The Contractor's level of effort will vary according to the needs of each Awardees' reform agenda and the degree to which state staff or consultants retained are capable of providing all

needed support.

**B. Actuarial Support to VHCIP for development of forms required by CMMI as part of the reporting process for the State Innovation Models Testing Grant.**

1. The State of Vermont is required to provide CMMI with actuarially supported documents as part of its State Innovation Models Testing (SIM) Grant. These forms include templates provided by CMMI and certified by actuaries that indicate the potential savings of Vermont's SIM Grant.
  - a. Pursuant to a Task Order, the Contractor will complete these forms on behalf of the State of Vermont and provide actuarial memos describing the methodology used to complete them.
  - b. The Contractor will only perform this activity if requested by the State of Vermont and will provide the documents by the federal deadline.

**C. Actuarial Support to VHCIP for the development of an all-payer waiver pursuant to section 3021 of the Affordable Care Act.**

1. The State of Vermont is pursuing an all-payer waiver pursuant to section 3021 of the Affordable Care Act. Pursuant to a Task Order, the State will require actuarial analyses to support its waiver request.
  - a. The Contractor will only perform this activity if requested by the State.
  - b. The Contractor will provide an estimate for the cost and time necessary to complete this work as requested by the State.
  - c. The State will provide explicit written approval of these activities.

**D. Ad-Hoc Tasks**

1. The State shall define deliverables as aligned in the scope of work by meeting with the Contractor on a bi-weekly basis in order to define and confirm inclusion of additional deliverable development as identified by the State.
2. Ad hoc tasks shall be reduced to writing and approved by both parties on a Task Order form and added to the work plan on a bi-weekly basis.

**II. Reporting Requirements**

**A. Monthly Reporting:**

1. The Contractor shall participate in a conference call each month with the State of Vermont regarding this work. The purpose of these calls is to discuss administrative and project issues as they arise and to report preliminary findings of analyses as they become available.
2. More frequent calls may be needed during active periods of the project. The Contractor shall participate in all such calls as requested by the State. The State and Contractor shall determine a reasonable level of participations in such calls.
3. The contractor shall submit monthly progress reports outlining all work accomplished during the previous month. The reports should be concise and in a simple format (e.g., bulleted list) approved by the State of Vermont. These reports are to be submitted electronically to the VHCIP Project Director within five business days after the end of the month. These monthly progress reports shall be consistent with the work billed on the monthly vouchers. At a minimum, monthly progress reports shall cover the following items:
  - a. Activities related to consultation and support related to each Awardee supported by this contract

- b. Activities planned for the forthcoming month
- c. Contractor's expectations of the State Staff during the forthcoming month (e.g., review of deliverables submitted, delivery of data or other items)
- d. Any problems or delays – encountered or foreseeable – that may affect contract performance
- e. Budget discrepancies greater than ten percent, i.e., cost overruns or underruns.
- f. Additional planning and coordination meetings may be required during the course of the contract, depending on the needs of each SIM Demonstration.

**III. Contract Administration, Key Personnel (See Attachment B for key personnel list and hourly rates)**

The key personnel specified in this contract are considered to be essential to work performance under this Agreement. At least 30 days prior to diverting any of the specified individuals to other programs or contracts (or as soon as possible, if an individual must be replaced, for example, as a result of leaving the employ of the Contractor), the Contractor shall notify the Contracting Officer and shall submit comprehensive justification for the diversion or replacement request (including proposed substitutions for key personnel) to permit evaluation by the State of the impact on performance under this contract. The Contractor shall not divert or otherwise replace any key personnel without the written consent of the Contracting Officer. The State may modify the contract to add or delete key personnel at the request of the contractor or Government.

**IV. Performance Expectations and Task Orders**

The State will develop monthly Task Orders on a monthly basis, or at such intervals as the State deems appropriate. Each Task Order will include deliverables that align with the work outlined in this Attachment A. Task orders are to be approved and signed by the designated representative of the State prior to any work commencement. Deliverables shall consist of quantifiable products or services resulting from activities performed pursuant to this Agreement. Such deliverables may include, but are not limited to the following:

1. Technical Assistance Scopes of Work
2. Work Plan Development
3. Ad Hoc Tasks
4. Technical Assistance tasks

The scopes of work and technical assistance provided by the Contractor shall contain specific deliverables, due dates, performance measures, and acceptance criteria, and shall serve as the basis for quality assurance and a means for monitoring the contractor's performance throughout the duration of this contract.

The Contractor shall provide a single point of contact who will manage all aspects of the contract including the assignment of qualified personnel to perform the work outlined herein. The Contractor's single point of contact or designee will be present at bi-weekly status meetings at a time and date agreed upon by the State and Contractor. The Contractor's single point of contact is:

Julie Peper, Director  
Wakely Consulting Group  
[juliep@wakely.com](mailto:juliep@wakely.com)  
720-226-9814

The State Authorized Representatives for bi-weekly status meeting and task order submissions are:

Georgia Maheras  
Project Director, VHCIP  
[georgia.maheras@vermont.gov](mailto:georgia.maheras@vermont.gov)  
802-505-5137

Karen Sinor, Contracts & Grants Administrator  
Business Office, Contracting Unit  
[karen.sinor@vermont.gov](mailto:karen.sinor@vermont.gov)  
802-241-0252

In compliance with the State of Vermont Bulletin 3.5 Procurement and Contracting Procedures, Section IX: Contract Drafting, Subsection A 8, all approved Task Orders under this agreement have been compiled and are incorporated into this agreement by execution of this amendment, see Exhibit A – Approved Task Orders Under this Agreement.

The number of personnel and level of expertise required, as well as the scheduled hours to be worked will be determined by the State and the Contractor as part of the status meetings and shall be included on the task order form. The assignment of additional personnel, hours, or the substitution of personnel with a higher level of expertise shall require pre-approval by the State.

The Contractor accepts full responsibility for any personnel assigned to perform the work herein. It is understood that the State will provide minimal oversight of personnel assigned to this contract.

The State shall notify the Contractor's single point of contact to discuss remediation if it is determined by the State that personnel assigned are not performing as expected. The State has the right to request a change in personnel assigned. The State shall not request a change in personnel without reason. The Contractor is obligated to provide a change in personnel, within 2 business days of a request by the State.

**V. The Contacts for this Award are as Follows:**

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>	<u>Contractor</u>
Name:	Karen Sinor	Georgia Maheras	Julie Peper
Phone #:	802-241-0252	802-505-5137	720-226-9814
E-mail:	<a href="mailto:karen.sinor@vermont.gov">karen.sinor@vermont.gov</a>	<a href="mailto:georgia.maheras@vermont.gov">georgia.maheras@vermont.gov</a>	<a href="mailto:juliep@wakley.com">juliep@wakley.com</a>

**VI. Notices to the Parties Under this Agreement:**

To the extent notices are made under this agreement, the parties agree that such notices shall only be effective if sent to the following persons as representative of the parties:

	<b>STATE REPRESENTATIVE</b>	<b>CONTRACTOR</b>
Name	Office of General Counsel	Julie Peper
Address	NOB 1 South, 280 State Drive Waterbury, VT 05671	9777 Pyramid Ct., Suite 260 Englewood, CO 80112
Email	<a href="mailto:AHS.DVHAlegal@vermont.gov">AHS.DVHAlegal@vermont.gov</a>	<a href="mailto:juliep@wakley.com">juliep@wakley.com</a>

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

**VII. DVHA Monitoring of Contract:**

The parties agree that the DVHA official State Program Manager is solely responsible for the review of invoices presented by the Contractor.

**VIII. Subcontractor Requirements:**

Per Attachment C, Section 19, if the Contractor chooses to subcontract work under this agreement, the Contractor must first fill out and submit the Subcontractor Compliance Form (Appendix I – Required Forms) in order to seek approval from the State prior to signing an agreement with a third party. Upon receipt of the Subcontractor Compliance Form, the State shall review and respond within five (5) business days. A fillable PDF version of this Subcontractor Compliance Form is available upon request from the DVHA Business Office. Under no circumstance shall the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Subcontractor Compliance Form to:

Karen Sinor, Contracts & Grants Administrator  
Business Office, Contracting Unit  
Department of Vermont Health Access  
[karen.sinor@vermont.gov](mailto:karen.sinor@vermont.gov)

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

**3. Attachment B: By replacing in its entirety with the following revised version:**

**ATTACHMENT B  
PAYMENT PROVISIONS**

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually performed as specified in Attachment A up to the maximum allowable amount specified in this agreement. State of Vermont payment terms are Net 30 days from date of invoice, payments against this contract will comply with the State's payment terms. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. Work performed between August 1, 2016 and the execution of this amendment that is in conformity with Attachment A may be billed under this agreement. The following provisions specifying payments are:

1. This contract is federally funded and is subject to federal approval by the Centers for Medicare and Medicaid Innovation (CMMI). No reimbursement shall be provided under this agreement without federal approval for the task, service, or product for which reimbursement is claimed. The maximum amount payable under this contract for services and expenses shall not exceed \$550,000.
  - a. Funding for this contract was approved through June 30, 2016 in the amount of \$300,000. However, due to the nature of federal funding approvals, the Contractor did not utilize all funding available prior to June 2016 and only used \$80,000 of the \$300,000 awarded to them.

- b. In June 2016, the State received federal funding approval for the time period July 1, 2016 – June 30, 2017 in the amount of \$70,000.
  - c. In October 2016, the State sought additional federal funding approval for the time period August 1, 2016 – June 30, 2017 in the amount of \$400,000.
2. The State shall pay the Contractor for deliverables specified in Attachment A, at the hourly rates presented below, inclusive of all expenses. The Contractor’s 2016 hourly rates are listed in the table below. Contractor billing rates increase on January 1 of each year, typically 3-4% but not to exceed 5% annually. Contractor shall send written notice and provide an updated rate card to the State upon effective billing rate increases. The State shall pay the Contractor at the following rates:

Wakely Consulting	Name	2016 Hourly Rate
Director	Julie Peper, Julia Lambert	\$450.00
Senior Consulting Actuary	As Assigned	\$385.00
Consulting Actuary	As Assigned	\$295.00
Associate Actuary	As Assigned	\$230.00
Senior Actuarial Analyst	As Assigned	\$200.00
Actuarial Analyst	As Assigned	\$180.00

**Work product and Deliverable Acceptance / Remediation**

All work products (deliverables) are subject to review and approval by the State before being accepted. Any work product deemed unacceptable by the State will be subject to revision by the Contractor based upon a Remediation Plan that the State and the Contractor will develop. The State may also require a remediation plan to address the Contractor’s failure or reasonably foreseeable failure to meet the timelines or due dates defined for any work product, reporting, or deliverables under this contract or a task order.

Work product may be deemed unacceptable by the State if it fails to meet the acceptance criteria listed in the task order. If there are no acceptance criteria specified, work product may be deemed unacceptable for any reason at the State’s sole discretion, including failure to meet performance measures and failure to follow State direction and input.

Notwithstanding Items 1 and 2 of this Attachment B, work required under a remediation plan will be performed at no additional charge, or at a discounted rate agreed to by the State at its sole discretion. The State may require under a remediation plan the commitment of additional resources as necessary to ensure full and timely completion of deliverables and/or remediation activities.

- 3. No benefits or insurance will be reimbursed by the State.
- 4. **Invoices.** All requests for reimbursements shall be made using the Invoice – Contracts Agreements form attached, see Appendix I – Required Forms, or a similar format agreed upon by the State and Contractor. All payments are subject to payment terms of Net 30 days. The Contractor shall submit invoices to the State monthly, but no later than quarterly. Invoices shall be accompanied by a status report and shall reflect the total number of hours worked per staff person, per objective as specified in the work plan in Attachment A. The

Contractor shall submit each invoice along with the paid subcontractor invoice as supporting documentation for all reimbursed payments.

Invoices should reference this contract number, contain a unique invoice number, and current date of submission. Invoices should be submitted electronically with all other reports to:

Business Office, Contracting Unit  
Department of Vermont Health Access  
[karen.sinor@vermont.gov](mailto:karen.sinor@vermont.gov)

**4. Attachment C: By replacing in its entirety with the following approved version dated 7/1/2016:**

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

**1. 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. "Agreement" shall mean the specific contract or grant to which this form is attached.

**2. 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.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

**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:** The Party will act in an independent capacity and not as officers or employees of the State.



**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the

Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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 in connection with the performance of this Agreement.

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 or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

**8. 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. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*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 \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

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

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. 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.

**B. Internal Controls:** In the case that this Agreement is a Grant 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).

- C. Mandatory Disclosures:** In the case that this Agreement is a Grant 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.

**13. 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.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.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.

**15. 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.

**16. 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.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only 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.

**19. 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 shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors'

workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

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

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. 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>

**23. 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.

**24. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**25. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**26. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs)

("Force Majeure"). Where Force Majeure is asserted, 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 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.

**27. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- A. Non-Appropriation:** 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.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**29. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**30. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**31. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**32. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

(End of Standard Provisions REVISED JULY 1, 2016)

**5. Attachment D: By replacing in its entirety with the following revised version:**

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

**1. The insurance requirements contained in Attachment C, Section 8 are hereby modified:**

*Professional Liability:* Before commencing work on this Agreement and throughout the term of this Agreement,

the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of \$1,000,000 per occurrence, and \$3,000,000 aggregate.

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

**2. Reasons for Modification(s):**

*Professional Liability:* The revised version of Attachment C, effective July 1, 2016, does not specify professional liability coverage. The base agreement contained professional liability limits that need to be included in this agreement.

**APPROVAL:**

\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL

DATE: \_\_\_\_\_

*State of Vermont – Attachment D  
Revised AHS – 10-30-10*

**6. Attachment E: By replacing in its entirety with the following revised version:**

**ATTACHMENT E  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services operating by and through its Department of Vermont Health Access (“Covered Entity”) and Wakely Consulting (“Business Associate”) as of November 12, 2014 (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

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

The parties agree as follows:

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

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

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

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

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

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

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

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

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

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

manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

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

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

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

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

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

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

**6. Documenting and Reporting Breaches.**

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.



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

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to

Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

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

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

8. **Providing Notice of Breaches.**

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

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

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

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

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

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

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

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

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

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

by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

**14. Termination.**

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

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*

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	<b>TOTAL:</b>	
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Remittance Address:

Bill to:

Business Office  
Department of Vermont Health Access  
NOB 1 South, 280 State Drive  
Waterbury, VT 05671

**INVOICE PAYMENTS ARE NET 30 TERMS, UNLESS STATED OTHERWISE.**

**APPENDIX I – REQUIRED FORMS**  
**Department of Vermont Health Access**  
**Subcontractor Compliance**

Date: \_\_\_\_\_

Original Contractor/Grantee Name: \_\_\_\_\_ Contract/Grant #: \_\_\_\_\_

Subcontractor Name: \_\_\_\_\_ Amount: \_\_\_\_\_

Scope of Subcontracted Services:

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Is any portion of the work being outsourced outside of the United States?

YES       NO  
**(If yes, do not proceed)**

All vendors under contract, grant, or agreement with the State of Vermont, are responsible for the performance and compliance of their subcontractors with the Standard State Terms and Conditions in Attachment C. This document certifies that the Vendor is aware of and in agreement with the State expectation and has confirmed the subcontractor is in full compliance (or has a compliance plan on file) in relation to the following;

- Subcontractor does not owe, is in good standing, or is in compliance with a plan for payment of any taxes due to the State of Vermont
- Subcontractor (if an individual) does not owe, is in good standing, or is in compliance with a plan for payment of Child Support due to the State of Vermont.
- Subcontractor is not on the State's disbarment list.

In accordance with State Standard Contract Provisions (Attachment C), The State may set off any sums which the subcontractor owes the State against any sums due the Vendor 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

\_\_\_\_\_  
 Signature of Subcontractor

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature of Vendor

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Received by DVHA Business Office

\_\_\_\_\_  
 Date

**Required: Contractor cannot subcontract until this form has been returned to DVHA Contracts & Grants Unit.**

**Appendix I – REQUIRED FORMS  
 Task Order Template**

<b>Task Title:</b>	
<b>Contractor:</b>	
<b>Contract #:</b>	
<b>Effective Dates:</b>	
<b>Cost:</b>	

**1. Scope of Work**

**2. Deliverables**

**3. Payment Provisions (Payment terms must specify if payments are based on an hourly rate or deliverables).**

**Approval:**

<b>Contractor Key Personnel</b>	Julie Peper	
<b>Approval Signature</b>		Date
<b>State Authorized Rep:</b>	Alicia Cooper	



<b>Approval Signature</b>		Date
<b>State Authorized Rep:</b>	Georgia Maheras	
<b>Approval Signature</b>		Date
<b>DVHA Contract Administrator</b>	Karen Sinor	
<b>Approval Signature</b>		Date

Comments: \_\_\_\_\_

**\*Task Orders must be submitted and signed by all parties prior to commencement of work.\***

This amendment consists of 30 pages. Except as modified by this amendment and any previous amendments, all provisions of this contract #26303, dated August 1, 2016, shall remain unchanged and in full force and effect.

**By the STATE OF VERMONT:**

**By the CONTRACTOR:**

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Steve Costantino, Commissioner      Date  
Department of Vermont Health Access (DVHA)  
NOB 1 South, 280 State Drive  
Waterbury, VT 05671  
Phone: 802-241-0239  
Email: [steven.costantino@vermont.gov](mailto:steven.costantino@vermont.gov)

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Julie Peper, Director      Date  
Wakely Consulting  
9777 Pyramid Ct., Suite 260  
Englewood, CO 80112  
Phone: 720-226-9814  
Email: [juliep@wakely.com](mailto:juliep@wakely.com)

**Exhibit A  
 Approved Task Orders Under the Agreement**

VHCIP Task Order Form Wakely Consulting - #26303 Task Order #1 Start Date: 11/14/2014 End Date: 12/31/2014 Total Cost: \$32,000
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Scope of Work	Deliverable Description and Due Dates	Contract Provision Reference	Cost
Development of Task Order, including high level review of files and discussion on the project	Proposed Task Order		\$2,000
Review Medicaid Files/Projections (including supporting calculations as needed) and discuss any findings	Memo outlining our comments on the review		\$11,000
Comment on the Office of the Actuary concerns with respect to the projections (assumes any suggested changes or analyses would be completed by VT) and participate in calls as needed	As requested by VT (could be formal memos, email response or simply participation on calls)		\$8,000
If appropriate and Wakely determines the projections are sufficient, Wakely will provide an actuarial certification stating the projections are sufficient; this may involve additional review of detail calcs (Wakely cannot guarantee that this will be the conclusion)	Actuarial Certification with related Memo documenting our support for actuarial certification		\$11,000

Comments: \_\_\_\_\_

Contractor Representative (Name and Title)	Julie Peper	
Approval Signature	E-SIGNED by Julie Peper on 2014-11-24 16:12:39 GMT	Date
State Authorized Rep:	Georgia Maheras	
Approval Signature	E-SIGNED by Georgia Maheras on 2014-11-24 16:13:54 GMT	Date
DVHA Contract Administrator	Jessica Mendizabal	
Approval Signature	E-SIGNED by Jessica Mendizabal on 2014-11-24 16:15:16 GMT	Date

<p><b>Appendix I – Required Forms</b></p> <p><b>VHCIP Task Order Form</b></p> <p><b>Wakely Consulting - #26303</b></p> <p><b>Task Order #2</b></p> <p><b>Start Date: 4/26/2015</b></p> <p><b>End Date: 7/1/2015</b></p> <p><b>Total Cost: \$5,000</b></p>
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Scope of Work	Deliverable Description and Due Dates	Contract Provision Reference	Cost
Support the GMCB and their contractors (HMA and Optimus) as it relates to providing insight on data issues and adjustments	Conference calls as needed; provide documentation from prior projects to show how data has been used and adjusted as well as explanations of issues found		\$5,000

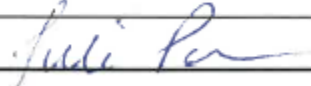

Comments: \_\_\_\_\_

<b>Contractor Representative (Name and Title)</b>	JULIE PEPPER	
<b>Approval Signature</b>	E-SIGNED by Julie Peper on 2015-05-12 03:14:25 GMT	Date
<b>State Authorized Rep:</b>	Georgia Maheras	
<b>Approval Signature</b>	E-SIGNED by Georgia Maheras on 2015-05-12 10:14:46 GMT	Date
<b>DVHA Contract Administrator</b>	Jessica Mendizabal	
<b>Approval Signature</b>	E-SIGNED by Jessica Mendizabal on 2015-05-12 13:45:57 GMT	Date

<b>Appendix I – Required Forms</b> <b>Wakely Consulting - #26303</b> <b>Task Order #3 (HealthFirst)</b> <b>Start Date: 8/26/2015</b> <b>End Date: 12/31/2015</b> <b>Total Cost: \$25,000</b>
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Scope of Work	Deliverable Description and Due Dates	Contract Provision Reference	Cost
Development of Task Order, including development of scope document and discussions with HealthFirst	Proposed Task Order		\$3,000
Draft Data Analysis, using both VHCURES and HealthFirst data, with metrics by service category and trends. Data will be split by service categories for which risk is currently taken and categories where risk is not taken but may be in the future. Data will be further adjusted, if possible, for known shared savings adjustments, to accurately reflect trends and potential volatility.	Excel exhibits		\$17,000
Memo outlining data used, methodology and results of data analysis.	A brief memo and the Excel model with data inputs and formulas so HealthFirst can leverage this in the future.		\$5,000

Comments: \_\_\_\_\_

<b>Contractor Representative</b>	JULIE PEPPER	
<b>Approval Signature</b>		Date 3/11/16
<b>State Authorized Rep</b>	Georgia Maheras	
<b>Approval Signature</b>		Date 3/14/16
<b>DVHA Contract Administrator</b>	Leah Korce	
<b>Approval Signature</b>	E-SIGNED by Leah Korce on 2016-03-15 11:33:53 GMT	Date

<p>Appendix I – Required Forms                  Wakely Consulting - #26303                  Task Order #4 (Medicaid ACO Cap Rates)                  Start Date: 3/23/2016                  End Date: 9/30/2016 (this Scope/Budget is through June 2016 only; July and on Task Order will be sent separately)                  Total Cost: \$25,000</p>
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Scope of Work	Deliverable Description and Due Dates	Contract Provision Reference	Cost
Development of Task Order, including development of scope document and discussions with DVHA	Proposed Task Order and Scope Document (Scope document 5/1/2016 and Task Order 6/16/2016)		\$4,000
Project Planning and Data Request; Internal discussions on how to approach the project, assumptions and data. Discussions with DVHA on data needed, timing, format, etc.	Discussions with DVHA (ongoing); Email with data request will be sent by 6/20/2016		\$10,000
Start looking at data and report – available reports (ACO, Milliman), data layouts, data outside VHCURES, etc.; further discussions with DVHA/Burns; if able, start writing queries to get ready for data	None – this is pre-work to get ready for when data will be delivered in early July		\$11,000


Comments: \_\_\_\_\_

Contractor Representative	JULIE PEPPER	
Approval Signature	e-Signed by Julie Peper on 2016-06-20 19:59:20 GMT	Date
State Authorized Rep	Georgia Maheras	
Approval Signature	e-Signed by Georgia Maheras on 2016-06-20 20:32:47 GMT	Date
DVHA Contract Administrator	Leah Korce	
Approval Signature	e-Signed by Leah Korce on 2016-06-20 22:18:28 GMT	Date

<p>Appendix I – Required Forms                  Wakely Consulting - #26303                  Task Order #5 (Medicaid ACO Cap Rates)                  Start Date: 7/1/2016                  End Date: 10/31/2016                  Total Cost: \$168,000</p>
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Scope of Work	Deliverable Description and Due Dates	Contract Provision Reference	Cost
Development of Task Order, including refinement of scope document and discussions with DVHA	Task Order and Scope Document		\$3,000
Ongoing data requests and data clarifications; load and evaluate data; resolve data issues.	Final data request via email; email documentation of database review and assumptions/issues that may be in the data.		\$20,000
Perform historical data calculations in total and ACO specific: assignment of risk scores, completion factors; summary and detailed cost and utilization exhibits by risk cohort; trend analysis.	Detailed data bases and Excel files with data summarized and additional fields (e.g. average risk score) included as appropriate. (Early August)		\$70,000
Perform estimates for CY2017 capitation by ACO, including large claim adjustments, cost savings analysis for the ACO, credibility adjustments, administration and risk charge.	Detailed exhibits showing capitation development. (Early August)		\$50,000
Presentation of methodology and results to DVHA and ACO; respond to questions and make revisions if needed.	Meetings with DVHA and meetings with DVHA and ACO; PowerPoint presentations, detailed exhibits. (Mid August)		\$15,000
Final rates based on meetings	Final rate package – report and supporting exhibits (End of August)		\$10,000

Comments: \_\_\_\_\_

Contractor Representative	JULIE PEPPER	
Approval Signature		Date 7/14/16
State Authorized Rep	Georgia Maheras	
Approval Signature	e-Signed by Georgia Maheras on 2016-07-14 17:20:49 GMT	Date
DVHA Contract Administrator	Leah Korce	
Approval Signature	e-Signed by Leah Korce on 2016-07-14 17:23:23 GMT	Date