

Request for Proposals:

Executive Director of the Vermont Statewide Independent Living Council (SILC)

for

The Vermont Statewide Independent Living Council (SILC)

and

Agency of Human Services (AHS);

Department of Disabilities, Aging and Independent Living (DAIL);

Division for the Blind and Visually Impaired (DBVI)

Schedule of Significant Dates

RFP Posted	May 22, 2018
Bidders' Questions Due	June 5, 2018 at 4:00PM
Department Response to Questions	June 12, 2018
Proposal Due/Closing Date	June 19, 2018 at 4:00PM
Bid Opening	June 20, 2018 at 10:00AM
1st Round Interviews	June 22, 2018
Selection Notification	July 5, 2018
Commencement of Contract	September 1, 2018

PLEASE BE ADVISED THAT ALL NOTIFICATIONS, RELEASES, AND AMENDMENTS ASSOCIATED WITH THIS RFP WILL BE POSTED AT: <http://www.vermontbidsystem.com>.

THE STATE WILL NOT ATTEMPT TO CONTACT VENDORS WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH VENDOR TO CHECK <http://www.vermontbidsystem.com> PERIODICALLY FOR ANY AND ALL NOTIFICATIONS, RELEASES AND AMENDMENTS ASSOCIATED WITH THE RFP.

Sole RFP Contact:

Fred Jones, Director
Division for the Blind and Visually Impaired
Department of Disabilities Aging and Independent Living
Vermont Agency of Human Services
280 State Drive, Waterbury, Vermont 05671-2030
802-241-0326
fred.jones@vermont.gov

This RFP is available in alternate formats upon request.

TABLE OF CONTENTS

A. INTRODUCTION.....3

B. PURPOSE OF REQUEST.....3

C. CONTRACT TERM AND DOLLAR VALUE.....3

D. SPECIFICATIONS OF WORK TO BE PERFORMED.....4

E. MINIMUM REQUIREMENTS.....6

F. DESIRED QUALIFICATIONS.....6

G. CONTRACT SPECIFICATIONS.....6

H. PROPOSAL SUBMISSION REQUIREMENTS.....7

I. AMENDMENTS.....8

J. BID OPENING.....8

K. RECEIPT OF INSUFFICIENT COMPETITIVE PROPOSALS.....8

L. NON-RESPONSIVE PROPOSALS.....8

M. REJECTION RIGHTS.....8

N. AUTHORITY TO BIND DAIL.....9

O. PROPOSAL REVIEW.....9

P. SCORING.....9

Q. EVALUATION CRITERIA.....9

R. NOTIFICATION OF AWARD.....10

S. PUBLIC RECORD: BID PROPOSALS.....10

T. CONFLICTS OF INTEREST.....10

U. ATTACHMENT 1: *State of Vermont Customary Provisions for Contracts and Grants*.....11-41

A. INTRODUCTION

The Department of Disabilities, Aging, and Independent Living (DAIL) is a department within the Vermont Agency of Human Services. The Division for the Blind and Visually Impaired (DBVI) is a statewide direct service organizations within DAIL. DBVI's mission is to support the efforts of Vermonters who are blind and visually impaired to achieve or sustain their economic independence, self-reliance, and social integration at a level consistent with their interests, abilities and informed choices. DBVI provides vocational rehabilitation and independent living services to individuals who are blind or visually impaired. For more information about DBVI please go to: <http://dbvi.vermont.gov>.

The Vermont Statewide Independent Living Council (SILC) is a is a not-for-profit, non-governmental, consumer controlled organization established in accordance with Title VII of the Federal Rehabilitation Act of 1973, as amended. The SILC is responsible for the development, implementation and monitoring of the 3-year Statewide Plan for Independent Living (SPIL). The purpose of the SILC is to assist people with disabilities to live as independently as possible. The SILC seeks to advance the equality with which people with disabilities enjoy, participate in and contribute to the lives of their communities, families and friends. The SILC consists of a group of Vermonters who are appointed by the Governor to work at ensuring that people with disabilities live their lives to their fullest potential. The SILC seeks to achieve this goal by supporting direct service programs and other initiatives which help make community life more inclusive and accessible. For more information on the SILC please go to: www.vtsilc.org.

B. PURPOSE OF REQUEST

The State and SILC are seeking an Executive Director for the SILC. This is an ideal opportunity for individuals who are seeking home-based self-employment. The SILC Executive Director must be a well-organized and self-directed individual, with strong leadership skills and the expertise to organize a large council with a diverse membership. This includes the responsibility for implementing a three (3) year State plan. An understanding of the experience of living with a disability as well as practical knowledge of the independent living movement is required.

C. CONTRACT TERM AND DOLLAR VALUE

The term of the Contracts arising from this Request for Proposal (RFP) will be for two (2) years, with the option to renew the contract for 2 additional one-year terms, following a contract performance review and approval by State. The estimated Contract start date is September 1, 2018.

The annual value of the contract will be between \$55,000.00 to \$65,000.00 per year, inclusive of all costs.

Payment is based on the expectation of an average of thirty (30) hours per week worked over fifty (50) weeks per contract year. The selected contractor will be responsible for his or her own travel expenses that are part of their typical SILC duties. The SILC will reimburse the contractor up \$650 per year for mileage expenses on travel in-excess of 40 miles round-trip beyond the contractor's home office, reimbursed at the current rate in effect for Vermont State employees. In addition, the SILC will reimburse the Executive Director for approved administrative expenses up to \$1,000 per year. In addition to the above, the State may provide biannual performance bonus payments up to \$2,000 per year. The bonus provision will be negotiated with the selected contractor. The bonus provision is not guaranteed but is dependent on funds available within the annual SILC budget. All payments for salary, bonuses and expenses shall not exceed the above referenced per year total amount.

The finalized Contract with the State will include appropriate schedules of completion with expected outcomes and related performance-based quality standards. Based on the nature of the Contract, the above performance requirements may include incentives or holdbacks which may change the net Contract value or timetables within the financial scope as defined in this RFP.

D. SPECIFICATIONS OF WORK TO BE PERFORMED

The selected Contractor will serve under the supervision of the Vermont Statewide Independent Living Council (SILC) as the Executive Director to the SILC. Contractor will receive weekly supervision and direction from the SILC Chair. Specific responsibilities to be performed by the selected contractor will include, but are not limited to, the following:

I. Provide basic direction and support for the SILC:

- A. Maintain regular communication and consultation with the SILC Chair. Update Chair regarding relevant issues related to the implementation of the State Plan for Independent Living (SPIL) and other assignments in progress. Read and route mail in a timely manner.
- B. Participate in all Executive Committee and full SILC meetings (and sub-committee meetings, when requested), ensuring that all logistical details are addressed to make meetings accessible and productive. This duty includes:
 - 1. Arranging for accessible space.
 - 2. Recruiting interpreters.
 - 3. Assisting members with transportation and reasonable accommodations when necessary. SILC members are expected to participate in their duties as independently as possible.
 - 4. Ensuring that all written materials are accessible by being in large print, Braille, on tape, or in whatever format is needed by SILC members.
 - 5. Ensuring that all materials are sent to SILC members in a reasonable amount of time prior to the meeting dates, recognizing that members often need extra time for reading and/or listening.
 - 6. Assisting in providing whatever other services members need in order to participate effectively in SILC business.
- C. Prepare timely written reports (including minutes) for the full SILC meetings, as well as Executive Committee and sub-committee meetings. Minutes are routinely written / prepared within 10 business days following the dates of the meetings, and they are distributed within 20 business days, but other priorities may impact this expectation.
- D. In consultation with the SILC Chair, and other parties as necessary, assist in developing agendas for full SILC and Executive Committee and other sub-committee meetings.
- E. Actively participate in meetings and other activities as an information and resource person, sharing knowledge and suggestions based upon experience, knowledge, background and skills in the independent living movement for people with disabilities.

II. Administrative/Coordination Duties:

- A. Participate in hiring of consultants, and provide assistance to committees, as needed.

- B. Assist the SILC Finance Committee and designated State liaison in budget preparation and monitoring of expenditures. May work with State liaison in preparing special financial reports when needed by the SILC, such as when the SILC is negotiating the next year's budget with the State. Also, maintain a working knowledge of the SILC's finances.
- C. Ensure that information necessary for the smooth operation of the SILC and implementation of the SPIL is communicated on a timely basis in appropriate, accessible format.
- D. Complete federal 704 report.
- E. In consultation with the SILC Chair, report to the SILC regarding the status of SILC membership, i.e., which members' terms will expire, who would like reappointment by the Governor, etc. Also, maintain a file of people who have expressed interest in applying for appointment to the SILC; assist the Nominating Committee in identifying and recruiting potential members; and provide the SILC with information about Title VII requirements for SILC membership, i.e., statewide representation, cross-disability, and minority and majority consumer representation.
- F. Coordinate with the State Designated Unit to manage the administration of SILC operations through the State Agency of Human Services (AHS). This includes working with the State Designated Unit liaison to ensure the SILC operates within AHS administrative rules.

III. State Plan for Independent Living (SPIL):

- A. In consultation with SILC Chair, develop the SPIL and coordinate the activities described therein in cooperation with the SILC committees and the State.
- B. Work with the Executive Committee and other committees to develop a system for tracking the implementation of the current SPIL and for developing the SPIL for the next fiscal year.
- C. Prepare progress reports for the Executive Committee and/or other committees.
- D. Coordinate activities regarding SPIL public hearings.

IV. Community Relations:

- A. At the request of the SILC Chair, represent the SILC at three (3) or more meetings, hearings, conferences and other activities related to the mission and goals of the SILC.
- B. In consultation with the SILC Chair, develop a strategy for maintaining effective communication among SILC members and other groups regarding SILC activities, especially other groups whose missions are similar.
- C. As directed by the SILC Chair, develop media and public information strategies to promote the mission of the SILC.

V. Development:

- A. As directed by the SILC Chair, provide information to state-level agencies and the Legislature in

support of independent living.

- B. As directed by the SILC Chair, explore fund raising and grant writing opportunities to support SILC activities.

E. MINIMUM REQUIREMENTS

To be qualified to bid for this Contract, all of the following requirements must be met:

Prospective bidders must:

- Have a mobile phone and a computer with reliable internet access and an e-mail account;
- Have the ability to travel to required meetings around Vermont;
- Have the ability to work flexible hours based on the needs of the SILC; and
- Reside in the State of Vermont.

The State will require the selected contractor to carry \$1,000,000 in General Liability Insurance. State shall be listed as Additional Insured. A minimum of \$500,000 combined single limit in Automobile Liability Insurance coverage. The selected contractor will also be required to accept standard State of Vermont contracting requirements. These requirements are outlined in Attachments C, D, E and F, included herein. The selected contractor will also be required to sign a Consumer Information and Privacy Rule regarding the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) agreement as part of a State contract, which is also included herein.

F. DESIRED QUALIFICATIONS

The ideal candidate for this Contract, will have the following desired qualification:

- Knowledge and experience with the independent living movement for people with disabilities;
- Ability in and knowledge of the variety of methods for making communication accessible;
- Strong administrative skills; and
- Strong meeting facilitation and public speaking skills.

G. CONTRACT SPECIFICATIONS

The Contract format will be the State of Vermont Standard Contract for Services, with relevant attachments. The Contract shall set forth the contract term, the required prior approvals, the amount to be paid for the services performed, and include a description of the work to be performed, work products to be produced, anticipated timelines, and payment provisions including any performance incentives. Contractor is expected to comply with applicable standard State contract provisions (current provisions appear in Attachment 1).

The Contract shall include terms that explain that the State shall monitor the Contractor’s performance in accordance with the terms of the agreement for troubleshooting purposes and to ensure that the contract terms are met and the funds paid to the Contractor are appropriate for the work performed.

The State reserves the right to waive portions of this RFP, to waive any informalities in proposals, to reject any or all proposals and/or to negotiate terms and conditions of the awarded contract. The State reserves the right to negotiate the specific terms and provisions of any proposal through contract negotiations.

H. PROPOSAL SUBMISSION REQUIREMENTS

1. **Proposal Packet:** A proposal packet is the entire package of information submitted to State by one (1) bidder in response to this RFP. Each bidder may submit only one (1) proposal packet for this RFP. The State reserves the right to accept or reject any or all proposals. Final selection or rejection of proposals will be the decision of the Commissioner of DAIL, or her designee. If a proposal is selected, the person or organization that submitted the proposal will be invited to negotiate a contract. The bidder must comply with the State Contract, Attachments C: Customary State Contract Provisions; Attachment E: Business Associate Agreement; and Attachment F: Agency of Human Services Customary State Contract Provisions.

a. **Required content:** Interested bidders must submit a proposal that includes the following sections:

i. **Letter of Submittal:** The letter shall include:

A proposal letter outlining your interest, knowledge, background and skills. The letter should be no longer than three (3) pages in 12 or larger font. The proposal must at minimum include:

- a) The bidder's knowledge and experience with the independent living movement;
- b) The bidder's background and experience with public boards or councils;
- c) An outline of the bidder's administrative skills; and
- d) The bidder's experience with community organization and public speaking.

Please also submit a detailed list of all materials and enclosures submitted with the proposal.

ii. **Resume:** A copy of the bidder's resume. The resume should not exceed two pages in length.

iii. **Writing Sample:** A writing sample authored exclusively by the bidder. The writing sample should not exceed five pages. Write about an issue you are passionate about within the Independent Living or disability rights movement.

iv. **References:** The contact information for three (3) references. [Do not include written references with submission].

b. **Required format:**

i. Proposals must be submitted using no less than 12-point font;

ii. Proposals may not exceed ten (10) pages, excluding the State's standard contract attachments;

iii. Include your organization's name on each page of your proposal and on any other information you are submitting.

iv. All proposals are to be submitted by email and must be submitted in **.pdf format**. Proposals must include the **scanned original signature** of an individual who is authorized to submit the proposal on behalf of their organization.

2. **Bidder Questions:** Any vendor requiring clarification of any section of this proposal must submit specific questions in writing according to the Schedule of Significant Dates set forth on the Cover Page of this proposal. Questions must be e-mailed to the RFP Contact also listed on the Cover Page. All bidder questions must be received by no later than **June 5, 2018 at 4:00 PM**. Any question not raised in writing on or before the last day of the initial question period is waived. Responses to the questions submitted will be posted to the Electronic Bulletin Board website at <http://www.vermontbidsystem.com>, on or before **June 12, 2018**.

3. **Proposal Submissions:** Proposals must be submitted via email only to:

Fred Jones, Director
Division for the Blind and Visually Impaired
fred.jones@vermont.gov

4. **Submission Deadline:** It is the bidder's responsibility to ensure that a submission (including an electronic submission) is received by the State before the stated deadline. Bidders are encouraged to confirm that a proposal has been received by the State before the deadline, including the use of an electronic received receipt message. The State shall not be responsible for any submission (including any electronic submission) that is not received by the deadline, regardless of cause (including but not limited to the failure of electronic communication). Bidders are expected to keep an original paper copy of proposals at their primary place of business, which must be available for review by State staff.

Complete proposals must be received by 4:00 PM EST on Tuesday, June 19, 2018

5. **Costs:** The State of Vermont assumes no responsibility and no liability for costs incurred by bidders in responding to the RFP or in responding to any further requests for interviews, additional data, etc. prior to the issuance of a contract.

I. AMENDMENTS

DAIL reserves the right to amend this RFP. DAIL will post any RFP amendments to the Electronic Bulletin Board at <http://www.vermontbidsystem.com>.

J. BID OPENING

The bid opening will be held on **Wednesday, June 20, 2018 at 10:00 AM** at the Waterbury State Office Complex, 280 State Drive, Room 109a, Waterbury, VT 05671. Typically, the State will open the bid, read the name and address of the bidder. No further information which pertains to the bid will be available at that time. The State reserves the right to not disclose the amount of a bid if, in its sole discretion, it is determined that the nature, type, or size of the bid is such that the State cannot immediately (at the opening) establish that the bids are in compliance with the RFP. As such, there will be cases in which the bid amount will not be read at the bid opening.

K. RECEIPT OF INSUFFICIENT COMPETITIVE PROPOSALS

If DAIL receives one or fewer responsive proposals as a result of this RFP, DAIL reserves the right to select the Contractor which best meets DAIL's needs. That Contractor will be selected by DAIL management. The Contractor will be required to document their ability to meet the requirements identified in this RFP. DAIL reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal or any part thereof. Failure of a bidder to respond to a request for additional information or clarification could result in rejection of that bidder's proposal.

L. NON-RESPONSIVE PROPOSALS

DAIL may, at its sole discretion, reject any proposal as non-responsive that does not comply with any part of this RFP.

M. REJECTION RIGHTS

DAIL may reject a proposal for one or more of the following reasons or for any other reason deemed to be in the best interest of the State:

- The failure of the bidder to adhere to one or more provisions established in this RFP.
- The failure of the bidder to submit required information in the format specified in this RFP.
- The failure of the bidder to adhere to generally accepted ethical and professional principles during the RFP process.

N. AUTHORITY TO BIND DAIL

The Commissioner and Deputy Commissioner of DAIL (in parent AHS Secretary or Deputy Secretary) are the only persons who may legally commit DAIL to any contract agreements.

O. PROPOSAL REVIEW

A Review Team of knowledgeable individuals will evaluate each proposal. The Review Team shall review all proposals for compliance with RFP procedural instructions and RFP key points. If the procedural instructions are not followed, the proposal shall be considered non-responsive. Non-responsive proposals may be eliminated from further evaluation.

P. SCORING

Proposals will be scored by individual team members. Scoring is intended to clarify strengths and weaknesses of proposals relative to one another and to provide guidance to decision-makers. It is not a guarantee that the bidder providing the lowest cost estimate to the State will be selected as the successful bidder. The sum of the scores of the review team members will become the proposal’s final score.

Q. EVALUATION CRITERIA

The State anticipates selecting a Contractor under the terms of this Request for Proposals (RFP). The Contractor which is judged to best meet the criteria of the RFP will be invited to negotiate a Contract with the State.

Areas of Review	Points Assigned
A. The bidder’s knowledge, background and skills in the independent living movement for people with disabilities.	25 Points
B. The bidder’s background and experience with public boards or councils	20 Points
C. The bidder’s administrative skills and experience	20 Points
D. The bidder’s experience with community organization and public speaking	20 Points
E. The quality of the bidder’s writing sample	15 Points
Total	100 Points

SILC members, including the Directors of the Designated State Unit, will evaluate the bids based upon the above criteria, and will conduct in-person interviews with the applicants who achieve the highest scores on the above criteria. Final selection will be based upon the above criteria, the in-person interviews and reference checks.

R. NOTIFICATION OF AWARD

DAIL will notify all bidders in writing of selection of the selected bidder. DAIL will notify all bidders when the contract resulting from this RFP are signed by posting to the Electronic Bulletin Board (<http://www.vermontbidsystem.com>), on or after July 5, 2018. If the successful bidder refuses to sign the Contract within ten (10) business days of delivery, DAIL may cancel the selection and award to the next highest-ranked bidder.

S. PUBLIC RECORD: BID PROPOSALS

1. All proposals shall become the property of the State. All bid proposals and submitted information connected to this RFP may be subject to disclosure under the State's access to public records law. The successful bidder's response will become part of the official contract file. When the contract is finalized, material associated with its negotiation is a matter of public record except for those materials that are specifically exempted under the law. One such exemption is material that constitutes trade secret, proprietary, or confidential information. If the response includes material that is considered by the bidder to be proprietary and confidential under 1 V.S.A. § 317, the bidder shall clearly designate the material as such prior to bid submission. The bidder must identify each page or section of the response that it believes is proprietary and confidential and provide a written explanation relating to each marked portion to justify the denial of a public record request should the State receive such a request. The written justification must address the proprietary or confidential nature of each marked section, provide the legal authority relied on, and explain the harm that would occur should the material be disclosed. Under no circumstances can the entire response or price information be marked confidential. Responses so marked may not be considered and will be returned to the bidder.
2. Submitted bid documents and RFP records shall not be released until the Contractor(s) and DAIL have executed the contract. At that time, the unsuccessful bidders may request a copy of their own score sheets as well as request to view the selected bidder's proposal at DAIL. Other persons or organizations may also make a request at that time or at a later date.
3. The name of any Vendor submitting a response shall also be a matter of public record.
4. Upon receipt of a public records request, following execution of the Contract, information about the competitive procurement may be subject to disclosure. DAIL will review the submitted bids and related materials and consider whether those portions specifically marked by a bidder as falling within one of the exceptions of 1 V.S.A., Ch. 5 Sec. 317 are legally exempt. If, in DAIL's judgment pages or sections marked as proprietary or confidential are not proprietary or confidential, DAIL will contact the bidder to provide the bidder with an opportunity to prevent the disclosure of those marked portions of its bid.

T. CONFLICTS OF INTEREST

A conflict of interest is a set of facts or circumstances in which either a Vendor or anyone acting on its behalf in connection with this procurement has past, present, or currently planned personal, professional, or financial interests or obligations that, in AHS' determination, would actually or apparently conflict or interfere with the Vendor's contractual obligations to AHS. A conflict of interest would include circumstances in which a Vendor's personal, professional or financial interests or obligations may directly or indirectly:

- Make it difficult or impossible to fulfill its contractual obligations to AHS in a manner that is consistent

with the best interests of the State of Vermont;

- Impair, diminish, or interfere with that Vendor's ability to render impartial or objective assistance or advice to AHS; or
- Provide the Vendor with an unfair competitive advantage in future AHS procurements.

Neither the Vendor nor any other person or entity acting on its behalf, including but not limited to Subcontractors, employees, agents and representatives, may have a conflict of interest with respect to this procurement. Before submitting a proposal, a Vendor must certify that they do not have personal or business interests that present a conflict of interest with respect to the RFP and resulting contract. Additionally, if applicable, the Vendor must disclose all potential conflicts of interest. The Vendor must describe the measures it will take to ensure that there will be no actual conflict of interest and that its fairness, independence and objectivity will be maintained. AHS will determine to what extent, if any, a potential conflict of interest can be mitigated and managed during the term of the contract. Failure to identify potential conflicts of interest may result in disqualification of a proposal or termination of the contract.

Note: Agencies, organizations and individuals who were involved in activities related to the most recent receivership, as well as owners, operators and staff of any long-term care facility included in Vermont's receivership statute, are not eligible to bid on this Contract.

U. ATTACHMENT 1: Current State of Vermont Customary Provisions for Contracts and Grants.

Attachment 1

CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

1. **Parties.** This is a Contract for services between State of Vermont, ENTER YOUR DEPT/DIV (hereinafter called "State"), and ENTERCONTRACTORNAME, with a principal place of business in ENTERTOWN/CITY (hereinafter called "Contractor"). Contractor's form of business organization is a ENTERBUSINESSTYPE. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this Contract is services generally on the subject of ENTER_A_SHORT_STATEMENT_OF_WORK. Detailed services to be provided by the Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$XX,XXX.XX.

4. **Contract Term.** The period of Contractor's performance shall begin on START_DATE and end on END_DATE.

5. **Source of Funds.** The Program Code for this Contract is:
Program Description; Program Code XXXXX

6. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

7. **Contact Persons for this Contract.**

State Primary Contact Person:

State Employee, Employee Title
E-mail: state.employee@vermont.gov
Telephone: 802-555-1212

Contractor Primary Contact Person:

Contractor Name, Title
E-mail: contractor@contractorbiz.com
Telephone: 888-555-1212

8. **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.

9. **Cancellation.** This contract may be canceled by either party by giving written notice at least thirty (30) days in advance.

10. **Attachments.** This Contract consists of __ pages including the following attachments, which are incorporated herein:

- Attachment A - Statement of Work
- Attachment B - Payment Provisions
- Attachment C - Standard State Provisions for Contracts and Grants
- Attachment D - Other Provisions
- Attachment E - Business Associate Agreement
- Attachment F - AHS Customary Contract Provisions

11. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment D (if applicable)
- (3) Attachment C
- (4) Attachment A
- (5) Attachment B
- (6) Attachment E
- (7) Attachment F

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

By the State of Vermont:

By the Contractor:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Contractor's Address:

Contractor Incorporated

Contractor Court

Suite C

Vendorville, VT 05000

ATTACHMENT A - STATEMENT OF WORK

The Contractor shall:

Attachment A of the Standard State Contract should be used to detail the work to be performed or products to be delivered by the contractor. This description of the work may also be referred to as the Statement of Work, Specifications of Work, or Subject Matter. The details of this Attachment will derive from the Specifications of Work included in the posted RFP.

ATTACHMENT B - PAYMENT PROVISIONS

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services actually delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted not more frequently than monthly.
5. Invoices shall be submitted to the State at the following address: _____
6. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows: _____

Payment terms necessary to the contract, such as the schedule and/or rates of pay will be added.

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

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 this 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.

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 if 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.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys’ fees, collection costs or other costs of the Party or any third party.

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 this 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 this Agreement, 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. 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 the continental United States, except with the express written permission of the State.

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 this 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 this 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 12 ("Location of State Data"); 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 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

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

24. 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.

25. 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.

26. 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.

27. Termination:

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. 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.

28. 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.

29. No Implied Waiver of Remedies: Either 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.

30. 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.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

A. Requirement to Have a Single Audit: 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 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 accordance with 2 CFR 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.

32. Requirements Pertaining Only to State-Funded Grants:

A. Certification Regarding Use of State Funds: If 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.

B. Good Standing Certification (Act 154 of 2016): If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes

of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

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 Disabilities, Aging & Independent Living, Division for the Blind and Visually Impaired (“Covered Entity”) and INSERT VENDOR NAME, (“Business Associate”) as of MONTH 1, 2017 (“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 18 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 of HHS 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 19.8.
- 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. 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.

17. Training. Business Associate understands that it is its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity,

Business Associate shall participate in AHS training regarding the use, confidentiality, and security of PHI, however, participation in such training shall not supplant nor relieve Business Associate of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

18. 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.

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

19. Miscellaneous.

- 19.1 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.
- 19.2 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.
- 19.3 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.
- 19.4 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.

- 19.5 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.
- 19.6 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.
- 19.7 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.
- 19.8 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 15.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 7/7/17)

ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT/GRANT PROVISIONS

1. **Definitions:** For purposes of this Attachment F, the term “Agreement” shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term “Party” when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term “Party” shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term “Party” as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term “Party” shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.
2. **Agency of Human Services:** The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.
3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont’s Medicaid program and Vermont’s Global Commitment to Health Waiver*):

Inspection and Retention of Records: In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont’s Medicaid program and Vermont’s Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

Subcontracting for Medicaid Services: Notwithstanding any permitted subcontracting of services to be performed under this Agreement, Party shall remain responsible for ensuring that this Agreement is fully performed according to its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Party in connection with the performance of this Agreement, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Party must retain the authority to revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any requirement of this Agreement. Party shall make available

on request all contracts, subcontracts and service provider agreements between the Party, subcontractors and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

Medicaid Notification of Termination Requirements: Party shall follow the Department of Vermont Health Access Managed-Care-Organization enrollee-notification requirements, to include the requirement that Party provide timely notice of any termination of its practice.

Encounter Data: Party shall provide encounter data to the Agency of Human Services and/or its departments and ensure further that the data and services provided can be linked to and supported by enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: Party shall 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) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

4. **Workplace Violence Prevention and Crisis Response** (*applicable to any Party and any subcontractors and sub-grantees whose employees or other service providers deliver social or mental health services directly to individual recipients of such services*):

Party shall establish a written workplace violence prevention and crisis response policy meeting the requirements of Act 109 (2016), 33 VSA §8201(b), for the benefit of employees delivering direct social or mental health services. Party shall, in preparing its policy, consult with the guidelines promulgated by the U.S. Occupational Safety and Health Administration for *Preventing Workplace Violence for Healthcare and Social Services Workers*, as those guidelines may from time to time be amended.

Party, through its violence protection and crisis response committee, shall evaluate the efficacy of its policy, and update the policy as appropriate, at least annually. The policy and any written evaluations thereof shall be provided to employees delivering direct social or mental health services.

Party will ensure that any subcontractor and sub-grantee who hires employees (or contracts with service providers) who deliver social or mental health services directly to individual recipients of such services, complies with all requirements of this Section.

5. **Non-Discrimination:**

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from 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, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall 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 as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), 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 of Vermont and/or federal funds.

Party further shall 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, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. **Employees and Independent Contractors:**

Party agrees that it shall comply with the laws of the State of Vermont with respect to the appropriate classification of its workers and service providers as “employees” and “independent contractors” for all purposes, to include for purposes related to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party agrees to ensure that all of its subcontractors or sub-grantees also remain in legal compliance as to the appropriate classification of “workers” and “independent contractors” relating to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party will on request provide to the Agency of Human Services information pertaining to the classification of its employees to include the basis for the classification. Failure to comply with these obligations may result in termination of this Agreement.

7. **Data Protection and Privacy:**

Protected Health Information: Party 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 Agreement. Party 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: Substance abuse treatment information shall be maintained in compliance with 42 C.F.R. Part 2 if the Party or subcontractor(s) are Part 2 covered programs, or if substance abuse treatment information is received from a Part 2 covered program by the Party or subcontractor(s).

Protection of Personal Information: Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other personal or identifiable information that is linked or linkable to a specific person, such as date and place of birth, mother’s maiden name, etc.

Other Confidential Consumer Information: Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees,

subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

Data Breaches: Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal information identified above within 24 hours of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

8. **Abuse and Neglect of Children and Vulnerable Adults:**

Abuse Registry: Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact through (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

Reporting of Abuse, Neglect, or Exploitation: Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) 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: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party 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.

9. **Information Technology Systems:**

Computing and Communication: Party 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 Party as part of this agreement. Options include, but are not limited to:

1. Party's provision of certified computing equipment, peripherals and mobile devices, on a separate Party'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.

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 Party (or subcontractor or sub-grantee), shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

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

If Party is operating a system or application on behalf of the State of Vermont, Party 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 Party's materials.

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property.

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

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party 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. Party 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, Party shall securely delete data (including archival backups) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

Party, in the event of a data breach, shall comply with the terms of Section 7 above.

10. **Other Provisions:**

Environmental Tobacco Smoke: Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care

facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal 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. The federal Pro-Children Act of 1994, however, does not apply to 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.

2-1-1 Database: If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or contact information as well as accurate and up to date information to its database as requested. The "Inclusion/Exclusion" policy can be found at www.vermont211.org.

Voter Registration: When designated by the Secretary of State, Party 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.

Drug Free Workplace Act: Party will assure a drug-free workplace in accordance with 45 CFR Part 76.

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.

AHS ATT. F 5/16/2018

**Agency of Human Services
Consumer Information and Privacy Rule**

1. Definitions

- 1.1 "Agency" means the Vermont Agency of Human Services or any of its departments, offices, or divisions.
- 1.2 "Consumer" means an individual or family who is served, voluntarily or involuntarily, by the Agency. A Consumer served by any department, office, division, or program of the Agency, or its Contractors or Grantees, is considered to be a Consumer of the entire Agency.
- 1.3 "Contractor" means an individual or entity with whom the Agency has a contract to provide services. This rule only applies to such individuals or entities when they are providing these services under the contract.
- 1.4 "Disclose" or "Disclosure" means a communication of a Consumer's Individually Identifiable Information, an affirmation of another person's communication of Individually Identifiable Information, or an acknowledgment of an individual's status as a recipient of services or benefits, outside the Agency.
- 1.5 "Employee" means any person who works in a full-time, part-time, or temporary position for the Agency. Volunteers and interns of the Agency are considered Employees and have the same obligations under this rule as Employees.
- 1.6 "Grantee" means an individual or entity with whom the Agency has a grant to provide services. This rule only applies to such individuals or entities when they are providing these services under the grant.
- 1.7 "Individually Identifiable Information" means information created or received by the Agency or its Contractors and Grantees that identifies a Consumer, or where there is a reasonable basis to believe the information can be used to identify a Consumer.
- 1.8 "Inter-Disciplinary Team" means a group of Employees, Contractors, Grantees, or other individuals who are engaged in identifying, coordinating, planning, arranging, and providing support or services to a Consumer in order to carry out the Agency's legal obligations.
- 1.9 "Need-to-Know" means a Contractor, Grantee, or Employee has an actual need to access the information to perform his or her work on behalf of the Agency.
- 1.10 "Program Administration" means activities necessary to carry out the operations of the Agency. This consists of establishing eligibility and scope of services and assistance for which a Consumer has applied including the identification and coordination of those services within the Agency and its Contractors and Grantees; planning, arranging, providing, funding, or paying for services and assistance for individuals and families; coordination of benefits; detecting fraud and abuse; engaging in quality control and improvement activities; emergency response or disaster relief, and complying with federal and state legal, reporting, and funding requirements. Program administration is synonymous with agency administration and is bounded by state and federal enactments that require stricter confidentiality.
- 1.11 "Record" means any item, collection, or grouping of written or electronic information that includes Individually Identifiable Information that is maintained, collected, or used by the Agency, in whole or in part, to make decisions about an individual.
- 1.12 "Share" or "Sharing" means a communication of a Consumer's Individually Identifiable Information, an affirmation of another person's communication of Individually Identifiable Information, or an acknowledgment of an individual's status as a recipient of services or benefits within the Agency and its Contractors or Grantees when they are performing work on behalf of the Agency

2. **Basic Principles**

2.1 Principles of Confidentiality

The respectful treatment of Consumers includes respecting the privacy of their Individually Identifiable Information, while making every effort to meet their needs and assist them to successfully navigate the human services system.

All Individually Identifiable Information is presumed to be confidential and subject to these standards. Employees shall not Disclose the Individually Identifiable Information unless the Disclosure is authorized by the Consumer, a court, or is otherwise permitted or required by law.

Some Individually Identifiable Information is protected by federal and state confidentiality laws that have more rigorous standards which are not preempted by this rule and require informed Consumer consent before Disclosure.

2.2 Disclosures Required or Permitted by Law

This rule is not intended to expand or diminish current provisions in law relating to disclosure of confidential information.

2.3 Information Collection

Employees shall collect and record only the minimum amount of Individually Identifiable Information needed to fulfill the goals of serving the Consumer and meeting administrative or legal obligations.

2.4 Informing Consumers

At the earliest opportunity, Employees, Grantees and Contractors shall provide a Notice of Individually Identifiable Information Practices and explain to each individual or family the confidentiality laws that apply to Agency services. The Contractor's or Grantee's explanation shall include a description of the types of Individually Identifiable Information that may be lawfully used based on the scope of their work on behalf of the Agency and the situations in which a Consumer's consent is needed to permit a Disclosure.

3. **Permissible Sharing and Disclosure**

3.1 Sharing and Disclosure of Individually Identifiable Information

Except as provided in section 3.2 and for uses of Individually Identifiable Information that are permitted or required by state and federal law, Employees, Contractors and Grantees will ensure written permission or authorization has been obtained to disclose Individually Identifiable Information with non-Agency related service providers who are involved with the Consumer's services prior to Sharing or Disclosing any information.

When the Sharing or Disclosing of information is initiated by Employees or by Contractors and Grantees performing Agency work, the permission or authorization used will contain the required information set forth in this rule in section 4.2, except as otherwise provided by law.

All Sharing and Disclosures made by Employees, Contractors, and Grantees pursuant to Consumer consent shall include only the Individually Identifiable Information necessary for the purposes for which the permission or authorization was given and shall be made only as indicated in the permission or authorization.

Under all circumstances, all Individually Identifiable Information Shared among Employees, Contractors, and Grantees who are involved with providing services to the Consumer, or who administer those services, will be shared only on a Need-to-Know basis.

3.2 Information Sharing for Program Administration

Unless otherwise prohibited or restricted by law, the Agency may Disclose and Share Individually Identifiable Information without consent when required for Program Administration. No Individually Identifiable Information shall be Disclosed to a person or entity, unless directly connected with Agency Program Administration or necessary for compliance with federal or state laws or regulations or pursuant to Consumer permission or authorization.

3.3 Inter-Disciplinary Teams

Members of an Inter-Disciplinary Team may or may not need a Consumer's permission or authorization to share Individually Identifiable Information for the purpose of engaging in identifying, coordinating, planning, arranging, and providing services to a Consumer in order to carry out the Agency's statutory obligations.

Provided no stricter confidentiality laws apply, when the Inter-Disciplinary Team consists only of Employees, Contractors and/or Grantees of the Agency, members of the team are permitted to share Individually Identifiable Information with the team without the permission or authorization of the Consumer.

When an Inter-Disciplinary Team consists of individuals in addition to Employees, Contractors, or Grantees of the Agency, the Employee, Contractor or Grantee members of the team can only Disclose Individually Identifiable Information with the entire team with the permission or authorization of the Consumer.

Specific additional permission or authorization is also needed when stricter confidentiality laws apply such as those related to mental health, HIV, substance abuse, domestic violence, vocational rehabilitation services, or Adult Protective Services.

3.4 "Non-identifiable" Information

Information that does not identify a Consumer may be used for statistical research, reporting, and/or forecasting program needs.

3.5 Public Information

Information defined as public by 1 VSA § 317 or other applicable statute is available to the public. The procedures in the public records statute shall be followed before public information is released.

4. **Procedures Related to Sharing or Disclosing Individually Identifiable Information**

4.1 Obtaining Informed Permission or Authorization

To ensure permission or authorization is informed, materials about granting permission or authorization, the Agency confidentiality guidelines, and permission or authorization forms shall be in a language and format understandable to the Consumer. Reasonable accommodations shall be made for special needs. Employees, Contractors, and Grantees shall inform Consumers that granting permission or authorization is not a pre-requisite for receiving services that they are entitled to and for which they have applied, although refusal to give permission or authorization may limit the Agency's ability to provide the best quality services.

The Employee, Contractor or Grantee also shall explain the process and benefits of Service Coordination. The Consumer shall be provided with a copy of the most current Agency confidentiality guidelines and relevant permission or authorization form, as well as any other information required by state or federal law.

4.2 Required Elements of Permission or Authorization

Permission or authorization for the Sharing or Disclosure of Individually Identifiable Information shall ordinarily be in writing. If an emergency situation requires granting of verbal permission or authorization, such verbal permission or authorization will be documented as soon as possible thereafter. The permission or authorization shall contain the following elements:

1. The name of the Consumer who is permitting or authorizing to have his or her Individually Identifiable Information Shared or Disclosed;
2. A list or description of the kinds of information to be Shared or Disclosed;
3. An explanation of the purpose for which the permission or authorization is given;
4. A list or description of those authorized to receive the information;
5. A statement that the permission or authorization may be revoked in writing at any time except to the extent that the permission or authorization has already been acted or relied upon;
6. The date, event, or condition upon which the permission or authorization will expire if not revoked earlier;
7. The signature of the Consumer granting permission or authorization, or the name and signature of the person with authority to do so and the date;
8. The signature of the individual explaining the permission or authorization process with his or her position, job title, and date;
9. A space to provide individualized instructions; and
10. A statement that the information will not be disclosed further unless such disclosure is required or allowed by law.

A copy of the permission or authorization shall be provided to all signatories.

4.3 Consumer Access to Records

Unless prohibited or restricted by federal or state law or regulation, Consumers shall be permitted to view and obtain copies of their Agency records. The Agency shall have written procedures that are consistent with HIPAA which permit Consumers to review Individually Identifiable Information for accuracy and completeness and to request amendments to the information. Employees shall take reasonable steps to present records in a form accessible to the Consumer, including but not limited to large type format or verbal review. A reasonable, cost-based fee may be imposed, provided that the fee includes only the cost of copying, postage, and preparing an explanation or summary of the records as requested by the Consumer. This fee shall be waived if it would prohibit access.

1. Procedures to Protect Confidentiality

5.1. Agency Employees

The Agency shall ensure that all Employees shall be informed about this rule as well as the confidentiality protections afforded Consumers under the state and federal laws that apply to their area of employment. Employees shall sign an affirmation that they were informed and will comply with this rule. This affirmation shall be part of their personnel files. Supervisors shall review this affirmation with Employees during evaluations. Violation of this rule may result in disciplinary action.

5.2 Written Agreements with Grantees and Contractors

The Agency shall ensure its Contractors and Grantees are aware of this rule as well as the confidentiality protections afforded Consumers under the state and federal laws that apply to their services. Each Contractor and Grantee will inform its staff, volunteers, and interns of this rule and require them to comply with it.

5.3 Response to Third Party Non-Agency Requests for Individually Identifiable Information

An Employee shall not respond to requests from outside the Agency for Individually Identifiable Information about a Consumer even to acknowledge that the person is or is not a Consumer, unless required or permitted to by law or authorized by the Consumer in writing.

5.4 Documentation of Disclosure

Disclosures of Consumer Individually Identifiable Information shall be documented if the request does not meet the definition of a permissible Disclosure under Section 3.

Employees shall document in writing any Individually Identifiable Information actually Disclosed, along with the name of the person/entity to whom it was Disclosed and the date of the Disclosure.

5.5 Electronic Information

The Agency shall:

1. Ensure security procedures and policies consistent with this rule and HIPAA are established;
2. Ensure Employees are knowledgeable about the security procedures;
3. Include in its written agreements with Contractors and Grantees the requirements for Sharing and protecting electronic Individually Identifiable Information;
4. Maintain protocols limiting access to Individually Identifiable Information to only those Employees, Contractors, and Grantees who have an actual need to access the information in order to perform their work on behalf of the Agency.

5.6 Information Sharing Guidelines

The Agency shall create and follow written guidelines for the treatment of written, verbal, and electronic information. These shall be available to Consumers, Employees, Contractors, Grantees, third parties, as necessary to improve the overall understanding of this rule. The guidelines shall be updated as necessary.

6. Affirmation of Understanding Statement

As a Contractor for the State of Vermont, I affirm that I have read the Agency of Human Services (AHS) Rule No. 08-048, entitled Consumer Information and Privacy Rule, and that I agree to comply with its requirements.

I shall require all of my employees performing services under this contract, to sign an affirmation of understanding statement. Employee statements need not be sent to the State. However, they shall remain in Contractor's personnel records. The State can request copies of such documents if necessary.

Name of Company (Print or type)

Date

Authorized Signature

Title

Revised 1/1/2009