

Request for Proposals:

Nurse Aide Testing Competency and Evaluation Program for

**Agency of Human Services (AHS);
Department of Disabilities, Aging and Independent Living (DAIL);
Division of Licensing and Protection**

Schedule of Significant Dates

| | |
|---|------------------------------|
| RFP Posted | June 13, 2023 |
| Bidders' Questions Due | June 21, 2023 at 4:00PM EST |
| Department Response to Questions | June 29, 2023 |
| Proposal Due/Closing Date | July 13, 2023 at 4:00PM EST |
| Bid Opening | July 18, 2023 at 10:00AM EST |
| Selection Notification | August 7, 2023 |
| Commencement of Contract | November 1, 2023 |

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:

Suzanne Leavitt, MS RN, State Survey Agency Director
Division of Licensing and Protection
280 State Drive - HC 2 South
Waterbury, VT 05671-2060
802-241-0480
Suzanne.leavitt@vermont.gov

This RFP is available in alternate formats upon request.

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A. INTRODUCTION

The State of Vermont, Division of Licensing and Protection (DLP) is a statewide Division for Licensing and Protection within the Department of Disabilities, Aging and Independent Living (DAIL) in the Agency of Human Services (AHS), jointly hereafter “State”. A complete description of the Division’s programs can be found at the following websites: <https://dlp.vermont.gov>.

B. PURPOSE OF REQUEST

The Vermont Department of Disabilities, Aging and Independent Living is soliciting proposals for the administration of a nurse assistant competency testing/evaluation program to meet the requirements of the Nursing Home Reform Act of 1987 and rules issued in the February 25, 1991 Federal Register for the Health Care Financing Administration. The contract period covered by this proposal will be from November 1, 2023 to October 31, 2025, and it may be renewed annually for up to two years upon successful contract completion.

The contract resulting from this RFP will include administering the competency testing/evaluation to approximately 800 nurse assistants per year and reporting test results to the Department via the Vermont Board of Nursing.

The Request for Proposals details the services desired, criteria for selection of a contractor, and format for submission of proposals. Each proposal shall detail how the bidder will provide two distinct services:

1. Provision of and scoring a valid nurse assistant competency test/evaluation, including a written component and a manual skills component;
2. Administration of the competency test/evaluation, including arranging exam sites, scheduling exams, recruiting and training of exam proctors and manual skills raters.

The content of each proposal will be considered binding on the bidder and subject to subsequent contract confirmation.

Background

In the early 1990s, Vermont implemented a nurse assistant competency evaluation program and registry as required by law. This was accomplished primarily by utilizing the services of the national testing service which designed and provided the competency evaluation, arranged for all testing and sites, and developed and implemented the nurse assistant registry. In 1993, Vermont took over the administration of the nurse assistant registry, which now is managed by the Vermont Board of Nursing in conjunction with the Department of Disabilities, Aging and Independent Living (DAIL).

C. CONTRACT TERM AND DOLLAR VALUE

The term of the contract arising from this request for proposal will be for two (2) years, with an estimated contract start date of November 1, 2023. The contract may be renewed for two (2) additional one (1) year terms following a contract performance review and approval by the State. Bidders must provide a cost proposal for the services to be provided.

State anticipates that the maximum value for this contract shall not exceed \$200,000 per contract year or \$400,000 over a two-year term. However, the State will accept for consideration bids that are below or in excess of this amount. The contract will be structured as a fee for service contract under which payments are contingent on specific services.

D. SPECIFICATIONS OF WORK TO BE PERFORMED

1. Administration of Competency Test/Evaluation. Bidders must explain in their proposals how they propose to provide each of the following:
 - a. Conduct a nurse assistant competency testing/evaluation program that meets Federal requirements, to include a “state pay” option. The testing program must include both written and clinical components, to be implemented on November 1, 2023.
 - b. Provide competency evaluation for approximately 800 nurse assistants during each contract year, affording each candidate three opportunities to take the test and be listed on the registry within four months of date of employment by a facility.
 - c. Provide different methods of administering the competency testing/evaluation programs, including:
 - i. Oral administration of written exams;
 - ii. Exams for candidates who require ADA accommodations
2. Provide all management of exams and registration of candidates, including arranging for testing sites and proctors, recruiting and training of clinical exam raters, and a system for notifying candidates for the exam at least ten (10) working days prior to the exam.
3. Provide for pre-examination materials, including at a minimum, sample test questions for each candidate and materials for the nurse assistants explaining the testing process.
4. Ensure security and confidentiality of examination materials including a variety of alternative examination forms.
5. Provide testing in a manner that is non-intimidating to and respectful to the candidates, taking into consideration that many candidates will have minimal education and may never have taken a test of this type before.
6. Provide detailed results to the training program and candidate following each test event that indicate areas in which the candidate was deficient, to facilitate re-training and re-testing. The detailed results shall be provided within 10 business days.
7. Provide the Vermont Board of Nursing with online access to management reports on an ongoing basis. Reports must include: the number of candidates, the pass/fail rates statewide and by training program,

8. second and third testing attempts and pass/fail rates for each, and test results broken out by skill and content area. Provide a sample report.
9. Provide all training programs and the Vermont Board of Nursing with currently updated information on a website or via newsletters, that includes an analysis of test performance, tips, tools and/or helpful information based on Vermont test performance.
10. Provide ongoing communication, including conducting an annual in-person meeting or presentations at conferences, phone conferences and ad-hoc reports to address concerns.
11. Manage re-testing and describing the costs for second and third attempts.
12. Detail alternative types of administration of the competency evaluation the contractor is prepared to offer, to include testing opportunities for students that request special accommodation. Bidders should describe a strategy for offering testing frequently enough to ensure candidates have the best possible opportunity to be successful. Specify all costs for testing procedures; including registration, test administration, repeat exams, etc.
13. Provide a test dispute process that addresses disputes promptly and professionally.
14. Providing customer support. Prefer a dedicated State representative if vendor provides testing services in other states. Customers include testing candidates, training program staff, Board of Nursing staff and Department of Disabilities Aging and Independent Living.
15. Providing of and scoring of exams. Proposals must also:
 - a. Describe the exam(s) the bidder proposes to use.
 - b. Submit a sample examination and samples of other exam related materials such as pre-examination study materials and list any costs individually;
 - c. Describe how alternative examination forms are developed and guarantee comparability but variations among exams;
 - d. Supply any information on examination validity, including field testing;
 - e. Outline how the passing grade for exam is determined and how the State might adjust the passing grade;
 - f. Describe how costs for the competency test/evaluation will be billed to the State.
 - g. Describe the day of testing from the candidate's perspective.
16. Performance Measures. Bidders must explain in their proposals how they will to meet each of the following performance measures:
 - a. Evaluator objectivity and interrater reliability. Due to Vermont's small size and rural nature, test candidates may be known to their evaluators. Bidders must describe how they will ensure objectivity and interrater reliability, include examples of evaluator training and ongoing performance management.

- b. Skill performance steps must be clear, objective, and evidence-based.
- c. Written test questions will be developed using a Nurse Aide Job Analysis and the National Council of State Boards of Nursing (NCSBN) research as the basis for new questions, skills and revisions.
- d. Provide ongoing monitoring of test sites to include: flow of candidates, environment and equipment to ensure quality.
- e. All candidates shall be provided with a test date that is no more than 30 calendar days from the completed application being received and the testing center is within a 2 hour drive from the training program.
- f. The candidate testing application is easy to read, understand, and complete.
- g. If the bidder utilizes subcontractors, there shall be no change of subcontractor during the contract period.
- h. Customer support is immediately available during all testing events for technical assistance.
- i. Customer support is available to candidates and training programs regarding questions and/or concerns within 48 hours of inquiry.

Required Contract Services and Outcomes

1. Evaluator objectivity and interrater reliability. Due to Vermont's small size and rural nature, test candidates may be known to their evaluators. Bidders must describe how they will ensure objectivity and interrater reliability, include examples of evaluator training and ongoing performance management.
2. Skill performance steps must be clear, objective, and evidence-based.
3. Written test questions will be developed using a Nurse Aide Job Analysis and NCSBN research as the basis for new questions, skills and revisions.
4. The vendor shall provide ongoing monitoring of test sites to include: flow of candidates, environment and equipment to ensure quality.
5. All candidates shall be provided with a test date that is no more than 30 calendar days from the completed application being received that is within a 2 hour drive from the training program.
6. The candidate testing application is easy to read, understand, and complete.
7. If the bidder utilizes subcontractors, there shall be no change of subcontractor during the contract period.
8. Customer support is immediately available during all testing events for technical assistance.
9. Customer support is available to candidates and training programs regarding questions and/or concerns within 48 hours of inquiry.

Minimum Requirements

To be eligible to bid for this Contract, applicant must meet all of the following requirements:

The selected contractor will be required by the State to carry Commercial General Liability Insurance (\$1,000,000 Each Occurrence / \$2,000,000 General Aggregate), and a minimum of \$500,000 combined single limit in Automobile Liability Insurance. The selected contractor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Selected contractor will also be required to accept standard State of Vermont contracting requirements as 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.

D. 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 maximum 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.

E. PROPOSAL SUBMISSION REQUIREMENTS

a. 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 DAHL, 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.

i. Required Content: Interested bidders must submit a proposal that includes the following sections:

1. **Letter of Submittal:** A cover letter outlining the bidders interest, background and experience performing the work specifications as outlined above. Include the primary contact person for the proposal, including email, phone and mailing address (not included in the narrative page count).
2. **Qualifications:** Describe the qualifications and relevant expertise of the bidder. Include an organizational chart that clearly identifies each individual and the role they will perform.
3. **Implementation Plan:** The proposal must include a narrative plan for implementing the service specifications and outcomes required as described in Section D that includes:
 - a. A description of how the bidder plans to deploy staff statewide;

- b. A description of the management structure for the contracted services; and
 - c. Job descriptions for the staff, including minimum qualifications.
4. **Resumes:** Include resumes of the individual(s) who will manage the proposed work.
- 5. **Price Quotation and Budget:** The State expects bidders to submit a price quotation for the services provided.
 - 6. **Insurance Requirements:** Bid submissions must include a written statement confirming that the bidder possesses, or will obtain, the required insurance required by the State as outlined Section D above, and also in State's standard terms for contracts and grants, identified as Attachment C in Attachment 1 to this RFP.

ii. Required Format:

- 1. Proposals must be submitted using no less than 12-point font;
- 2. Proposals may not exceed ten (10) pages, excluding the State's standard contract attachments;
- 3. Include your organization's name on each page of your proposal and on any other information you are submitting;
- 4. Individual resumes or curricula vitae can be submitted as attachments to the proposal and are also not included in the ten (10) page limit; and
- 5. 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.

iii. Required Certifications and Disclosures:

- 1. **Worker Classification Compliance Requirements:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), Bidders must comply with the following provisions and requirements:
 - (1) **Self-Reporting:** For bid amounts exceeding \$250,000.00, Bidder shall complete the appropriate section in the attached Certificate of Compliance for purposes of self-reporting information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.
 - (2) **Subcontractor Reporting:** For bid amounts exceeding \$250,000.00, Bidders are hereby notified that upon award of contract, and prior to contract execution, the State shall be provided with 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). This requirement does not apply to subcontractors providing supplies only and no labor to the overall contract or project. This list **MUST** be updated and provided to the State as additional subcontractors are hired. A sample form is available online at <http://bgs.vermont.gov/purchasing-contracting/forms>. The subcontractor reporting form is not required to be submitted with the bid response.

2. **Executive Order 05-16: Climate Change Considerations in State Procurements:**

For bid amounts exceeding \$25,000.00 Bidders are requested to complete the Climate Change Considerations in State Procurements Certification, which is included in the Certificate of Compliance for this RFP.

After consideration of all relevant factors, a bidder that demonstrates business practices that promote clean energy and address climate change as identified in the Certification, shall be given favorable consideration in the competitive bidding process. Such favorable consideration shall be consistent with and not supersede any preference given to resident bidders of the State and/or products raised or manufactured in the State, as explained in the Method of Award section. But, such favorable consideration shall not be employed if prohibited by law or other relevant authority or agreement.

b. Bidder Questions: Any bidder 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 21, 2023 by 4 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 29, 2023, 4:30 PM.

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

Division of Licensing and Protection
Suzanne Leavitt, Director, Survey and Certification
suzanne.leavitt@vermont.gov

Bids must consist of a single email with a single, digitally searchable PDF attachment containing all components of the bid. Multiple emails and/or multiple attachments will not be accepted. There is an attachment size limit of 40 MB. It is the Bidder's responsibility to compress the PDF file containing its bid if necessary in order to meet this size limitation.

d. 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. Late bids will not be considered. 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 on July 13, 2023.

e. 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.

F. AMENDMENTS

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

G. BID OPENING

The bid opening will be held on **July 18, 2023 at 10 AM** and is open to the public. A teleconference call is scheduled for this time. To participate, please call 802-828-7228 and enter Conference ID: 789 536 371 and then #, when prompted. Typically, the State will open the bid, read the name and address of the bidder, and read the bid amount. 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.

H. RECEIPT OF INSUFFICIENT COMPETITIVE PROPOSALS

If AHS receives one or fewer responsive proposals as a result of this RFP, AHS reserves the right to select the Contractor which best meets AHS's needs. That Contractor will be selected by AHS management. The Contractor will be required to document their ability to meet the requirements identified in this RFP. AHS 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.

I. NON-RESPONSIVE PROPOSALS

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

J. REJECTION RIGHTS

AHS 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.

K. AUTHORITY TO BIND AHS

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.

L. 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.

M. 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.

N. SELECTION 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.

A Contractor will be selected by the State using the following criteria. Please refer to Section F for more specific instructions related to the required content, required format and additional criteria:

| Skills and Experience | Points Assigned |
|--|------------------------|
| Applicability and validity of test, including meeting federal requirements, and within the scope of nurse aide practice outlined in the attached list of skills, suitability for the type of person being tested, and success of field testing. | 25 points |
| Adequacy of work plan and schedule, including ability to meet deadlines. | 20 points |
| Efficiency and cost. | 10 points |
| Overall ability of the organization to carry out the program, including prior experience, qualifications of staff, ability to implement a program with minimal state support, and capacity to alter the program if further changes occur at a federal level. | 25 points |
| Ability of the organization to meet the Performance measures. | 20 points |
| Total | 100 Points |

Final selections will be based upon the above criteria.

O. NOTIFICATION OF AWARD

AHS will notify all bidders in writing of selection of the selected bidder. AHS 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 August 7, 2023. If the successful bidder refuses to sign the Contract within ten (10) business days of delivery, AHS may cancel the selection and award to the next highest-ranked bidder.

P. PUBLIC RECORD: BID PROPOSALS

- a. 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.

- b. Submitted bid documents and RFP records shall not be released until the Contractor(s) and AHS has 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 AHS. Other persons or organizations may also make a request at that time or at a later date.
- c. The name of any Vendor submitting a response shall also be a matter of public record.
- d. Upon receipt of a public records request, following execution of the Contract, information about the competitive procurement may be subject to disclosure. AHS 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 AHS's judgment pages or sections marked as proprietary or confidential are not proprietary or confidential, AHS will contact the bidder to provide the bidder with an opportunity to prevent the disclosure of those marked portions of its bid.

Q. 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.

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

Attachment 1

CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

STANDARD CONTRACT FOR SERVICES

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.

1. **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.

2. **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.

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

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

5. **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.

6. **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

7. **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.

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

9. **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

Attachment G - Federal Terms Supplement (when Applicable)

10. **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 G
- (5) Attachment A
- (6) Attachment B
- (7) Attachment E
- (8) 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:

By:

Contractor's Address:

Signature: _____

Name:

Title:

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.

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.

TIME/MATERIALS: If payment will be based upon time and materials, specify the frequency of invoicing and the rate of payment. For example:

Contractor shall be paid \$XX.XX per hour for work performed under this Contract and shall submit invoices to the State not more frequently than monthly.

FIXED PRICE/DELIVERABLES: If payments are fixed price, specify an invoice schedule that corresponds to completion of the deliverables or phases of work described in Attachment A. For example:

Contractor shall submit invoices to the State in accordance with the following schedule:

| <u>Deliverable</u> | <u>Invoice Amount</u> |
|--------------------------------------|-----------------------|
| Phase 1 completed by Month 1, 20XX | \$X,XXX.XX |
| Phase 2 completed by Month 1, 20XX | \$X,XXX.XX |
| Submit Final Report by Month 1, 20XX | \$X,XXX.XX |

7. The total value of this contract shall not exceed \$XX.XX within the stated Contract term.
8. Payments may be withheld in whole, or in part, in the event of failure by the Contractor to comply with the terms of this Contract.
9. State reserves the right to adjust any payment based upon Contractor's actual performance.
10. Contractor shall submit final claims for payment within 30 days of expiration, cancellation or termination of this Contract. Claims received after 30 days may not be honored by State.

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

SOV CONTRACTOR/GRANTEE/BUSINESS ASSOCIATE:

Vermont Contracting Company

SOV CONTRACT No. XXXXXX CONTRACT EFFECTIVE DATE: Month 1, 20XX

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 and Independent Living (“Covered Entity”) and Party identified in this Agreement as Contractor or Grantee above (“Business Associate”). This Agreement supplements and is made a part of the contract or grant (“Contract or Grant”) to which it is attached.

Covered Entity and Business Associate enter into this Agreement to comply with the 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. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

“*Agent*” means an *Individual* acting within the scope of the agency of the *Business Associate*, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c) and includes Workforce members and *Subcontractors*.

“*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 for “Business Associate” in 45 CFR § 160.103 and means Contractor or Grantee and includes its Workforce, *Agents* and *Subcontractors*.

“*Electronic PHI*” shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 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*” (“*PHI*”) shall have the meaning given in 45 CFR § 160.103, limited to the *PHI* created or received by *Business Associate* from or on behalf of Covered Entity.

“*Required by Law*” means a mandate contained in law that compels an entity to make a use or disclosure of *PHI* and that is enforceable in a court of law and shall have the meaning given in 45 CFR § 164.103.

“*Report*” means submissions required by this Agreement as provided in section 2.3.

“*Security Incident*” means the attempted or successful unauthorized Access, Use, Disclosure, modification, or destruction of Information or interference with system operations in an Information System relating to *PHI* in accordance with 45 CFR § 164.304.

“*Services*” includes all work performed by the *Business Associate* for or on behalf of Covered Entity that requires the Use and/or Disclosure of *PHI* to perform a *Business Associate* function described in 45 CFR § 160.103.

“*Subcontractor*” means a Person to whom *Business Associate* delegates a function, activity, or service, other than in the capacity of a member of the workforce of such *Business Associate*.

“*Successful Security Incident*” shall mean a *Security Incident* that results in the unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.

“*Unsuccessful Security Incident*” shall mean a *Security Incident* such as routine occurrences that do not result in unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System, such as: (i) unsuccessful attempts to penetrate computer networks or services maintained by *Business Associate*; and (ii) immaterial incidents such as pings and other broadcast attacks on *Business Associate's* firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to *Business Associate's* Information System.

“*Targeted Unsuccessful Security Incident*” means an *Unsuccessful Security Incident* that appears to be an attempt to obtain unauthorized Access, Use, Disclosure, modification or destruction of the Covered Entity’s *Electronic PHI*.

2. Contact Information for Privacy and Security Officers and Reports.

2.1 *Business Associate* shall provide, within ten (10) days of the execution of this Agreement, written notice to the Contract or Grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer of the *Business Associate*. This information must be updated by *Business Associate* any time these contacts change.

2.2 Covered Entity’s HIPAA Privacy Officer and HIPAA Security Officer contact information is posted at: <https://humanservices.vermont.gov/rules-policies/health-insurance-portability-and-accountability-act-hipaa>

2.3 *Business Associate* shall submit all *Reports* required by this Agreement to the following email address: AHS.PrivacyAndSecurity@vermont.gov

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Subject to the terms in this Agreement, *Business Associate* may Use or Disclose *PHI* to perform *Services*, as specified in the Contract or Grant. Such Uses and Disclosures are limited to the minimum necessary to provide the *Services*. *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* and only in compliance with applicable laws and regulations.

3.2 *Business Associate* may make *PHI* available to its Workforce, *Agent* and *Subcontractor* who need Access to perform *Services* as permitted by this Agreement, provided that *Business Associate* makes them aware of the Use and Disclosure restrictions in this Agreement and binds them to comply with such restrictions.

3.3 *Business Associate* shall be directly liable under HIPAA for impermissible Uses and Disclosures of *PHI*.

4. **Business Activities.** *Business Associate* may Use *PHI* if necessary for *Business Associate's* proper management and administration or to carry out its legal responsibilities. *Business Associate* may Disclose *PHI* 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 such *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 to notify *Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to accomplish such purposes.

5. **Electronic PHI Security Rule Obligations.**

5.1 With respect to *Electronic PHI*, *Business Associate* shall:

a) Implement and use Administrative, Physical, and Technical Safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312;

b) Identify in writing upon request from Covered Entity all the safeguards that it uses to protect such *Electronic PHI*;

c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of *Electronic PHI*. 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*, and be provided to Covered Entity upon request;

d) Report in writing to Covered Entity any *Successful Security Incident* or *Targeted Unsuccessful Security Incident* as soon as it becomes aware of such incident and in no event later than five (5) business days after such awareness. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available;

e) Following such *Report*, provide Covered Entity with the information necessary for Covered Entity to investigate any such incident; and

f) Continue to provide to Covered Entity information concerning the incident as it becomes available to it.

5.2 Reporting *Unsuccessful Security Incidents*. *Business Associate* shall provide Covered Entity upon written request a *Report* that: (a) identifies the categories of Unsuccessful Security Incidents; (b) indicates whether *Business Associate* believes its current defensive security measures are adequate to address all *Unsuccessful Security Incidents*, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures *Business Associate* will implement to address the security inadequacies.

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

6. **Reporting and Documenting Breaches.**

6.1 *Business Associate* shall *Report* to Covered Entity any *Breach* of Unsecured *PHI* as soon as it, or any Person to whom *PHI* is disclosed under this Agreement, becomes aware of any such *Breach*, and in no event later than five (5) business days after such awareness, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available.

6.2 Following the *Report* described in 6.1, *Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Business Associate* shall provide Covered Entity with the names of any *Individual* 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 *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Business Associate* shall provide 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.

6.3 When *Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person 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.

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*. *Business Associate* shall make its mitigation and corrective action plans available to Covered Entity upon request.

8. **Providing Notice of Breaches.**

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Business Associate* was responsible, and if requested by Covered Entity, *Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *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. *Business Associate* shall be responsible for the cost of notice and related remedies.

8.2 The notice to affected *Individuals* shall be provided as soon as reasonably possible and in no case later than sixty (60) calendar days after *Business Associate* reported the *Breach* to Covered Entity.

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

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

9. Agreements with Subcontractors. *Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Business Associate* must enter into such written agreement before any Use by or Disclosure of *PHI* to such *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 *PHI*. *Business Associate* shall provide a copy of the written 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 five (5) 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 five (5) 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 five (5) 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* available to the Secretary of Health and Human Services (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 the *PHI* is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If *Business Associate* fails to comply with any material term of this Agreement, Covered Entity may provide an opportunity for *Business Associate* to cure. If *Business Associate* does not cure within the time specified by Covered Entity or if Covered Entity believes that cure is not reasonably possible, Covered Entity may immediately terminate the Contract or Grant without incurring liability or penalty for such termination. If neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary of HHS. Covered Entity has the right to seek to cure such failure by *Business Associate*. Regardless of whether Covered Entity cures, it retains any right or remedy available at law, in equity, or under the Contract or Grant and *Business Associate* retains its responsibility for such failure.

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, *PHI* 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 *PHI*. *Business Associate* shall certify in writing and report to 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 report to Covered Entity any conditions that *Business Associate* believes make the return or destruction of *PHI* infeasible. *Business Associate* shall extend the protections of this Agreement to such *PHI* and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as *Business Associate* maintains such *PHI*.

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 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 Covered Entity's 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. Miscellaneous.

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

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards

promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

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

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

18.5 *Business Associate* shall not have or claim any ownership of *PHI*.

18.6 *Business Associate* shall abide by the terms and conditions of this Agreement with respect to all *PHI* even if some of that information relates to specific services for which *Business Associate* may not be a “*Business Associate*” of Covered Entity under the Privacy Rule.

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

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for *Business Associate* to return or destroy *PHI* as provided in Section 14.2 and (b) the obligation of *Business Associate* to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

Rev. 05/22/2020

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 or 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 though (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 05.16.2018

ATTACHMENT G

STATE OF VERMONT - FEDERAL TERMS SUPPLEMENT (Non-Construction)

for all Contracts and Purchases of Products and Services Using Federal Funds

(Revision date: July 28, 2022)

PROCUREMENT OF RECOVERED MATERIALS

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated Items unless the products cannot be acquired-

1. Competitively within a time frame providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price

Information about this requirement, along with the list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of section 6002 of the Solid Waste Disposal Act.

CLEAN AIR ACT

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

FEDERAL WATER POLLUTION CONTROL ACT

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. **a.** Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension*

(1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

CONTRACTOR BREACH, ERRORS AND OMISSIONS

1. Any breach of the terms of this contract, or material errors and omissions in the work product of the contractor must be corrected by the contractor at no cost to the State, and a contractor may be liable for the State's costs and other damages resulting from errors or deficiencies in its performance.
2. Neither the States' review, approval or acceptance of nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract.
3. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law or elsewhere in the contract.

TERMINATION FOR CONVENIENCE

1. General
 - a. Any termination for convenience shall be effected by delivery to the Contractor an Order of Termination specifying the termination is for the convenience of the Agency, the extent to which performance of work under the Contract is terminated, and the effective date of the termination.
 - b. In the event such termination occurs, without fault and for reasons beyond the control of the Contractor, all completed or partially completed items of work as of the date of termination will be paid for in accordance with the contract payment terms.
 - c. No compensation will be allowed for items eliminated from the Contract.
 - d. Termination of the Contract, or portion thereof, shall not relieve the Contractor of its contractual responsibilities for work completed and shall not relieve the Contractor's Surety of its obligation for and concerning any just claim arising out of the work performed.

2. Contractor Obligations

After receipt of the Notice of Termination and except as otherwise directed by the State, the Contractor shall immediately proceed to:

- a. To the extent specified in the Notice of Termination, stop work under the Contract on the date specified.
- b. Place no further orders or subcontracts for materials, services, and/or facilities except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
- c. Terminate and cancel any orders or subcontracts for related to the services, except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
- d. Transfer to the State all completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the State.

- e. Take other action as may be necessary or as directed by the State for the protection and preservation of the property related to the contract which is in the possession of the contractor and in which the State has or may acquire any interest.
- f. Make available to the State all cost and other records relevant to a determination of an equitable settlement.

3. Claim by Contractor

After receipt of the Notice of Termination from the state, the Contractor shall submit any claim for additional costs not covered herein or elsewhere in the Contract within 60 days of the effective termination date, and not thereafter. Should the Contractor fail to submit a claim within the 60-day period, the State may, at its sole discretion, based on information available to it, determine what, if any, compensation is due the Contractor and pay the Contractor the determined amount.

4. Negotiation

Negotiation to settle a timely claim shall be for the sole purpose of reaching a settlement equitable to both the Contractor and the State. To the extent settlement is properly based on Contractor costs, settlement shall be based on actual costs incurred by the Contractor, as reflected by the contract rates. Consequential damages, loss of overhead, loss of overhead contribution of any kind, and/or loss of anticipated profits on work not performed shall not be included in the Contractor's claim and will not be considered, allowed, or included as part of any settlement.

CERTIFICATE OF COMPLIANCE

For a bid to be considered valid, this form must be completed in its entirety, executed by a duly authorized representative of the bidder, and submitted as part of the response to the proposal.

A. **NON COLLUSION:** Bidder hereby certifies that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, bidder understands that this paragraph might be used as a basis for litigation.

B. **CONTRACT TERMS:** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Contract Provisions, and any other contract attachments included with this RFP.

C. **FORM OF PAYMENT:** Does Bidder accept the Visa Purchasing Card as a form of payment? ____
Yes ____ No

D. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds \$250,000.00.

Self-Reporting. Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

| Summary of Detailed Information | Date of Notification | Outcome |
|---------------------------------|----------------------|---------|
| | | |
| | | |
| | | |
| | | |

Subcontractor Reporting. Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will 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), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

E. **Executive Order 05 – 16: Climate Change Considerations in State Procurements Certification 1.**
Bidder owns, leases or utilizes, for business purposes, space that has received:

Bidder certifies to the following (Bidder may attach any desired explanation or substantiation. Please also note that Bidder may be asked to provide documentation for any applicable claims):

1. Bidder owns, leases or utilizes, for business purposes, space that has received:

- Energy Star® Certification
 - LEED®, Green Globes®, or Living Buildings ChallengeSM Certification
 - Other internationally recognized building certification:
-

2. Bidder has received incentives or rebates from an Energy Efficiency Utility or Energy Efficiency Program in the last five years for energy efficient improvements made at bidder's place of business. Please explain:

3. Please Check all that apply:

- Bidder can claim on-site renewable power or anaerobic-digester power (“cow-power”). Or bidder consumes renewable electricity through voluntary purchase or offset, provided no such claimed power can be double-claimed by another party.
- Bidder uses renewable biomass or bio-fuel for the purposes of thermal (heat) energy at its place of business.
- Bidder's heating system has modern, high-efficiency units (boilers, furnaces, stoves, etc.), having reduced emissions of particulate matter and other air pollutants.
- Bidder tracks its energy consumption and harmful greenhouse gas emissions. What tool is used to do this? _____
- Bidder promotes the use of plug-in electric vehicles by providing electric vehicle charging, electric fleet vehicles, preferred parking, designated parking, purchase or lease incentives, etc..
- Bidder offers employees an option for a fossil fuel divestment retirement account.
- Bidder offers products or services that reduce waste, conserve water, or promote energy efficiency and conservation. Please explain:

RFP/PROJECT:

DATE:

Page 3 of 3

4. Please list any additional practices that promote clean energy and take action to address climate change:

F. Acknowledge receipt of the following Addenda:

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

Addendum No.: _____ Dated: _____

Bidder Name: _____ Contact Name: _____

Address: _____ Fax Number: _____

_____ Telephone: _____

_____ E-Mail: _____

By: _____ Name: _____

Signature of Bidder (or Representative)

(Type or Print)

END OF CERTIFICATE OF COMPLIANCE

CONFIDENTIALITY AGREEMENT

This Agreement for use and non-disclosure of Confidential Information (“Agreement”) entered into and effective this __ day of _____, 20__ by and between:

[PROVIDER]

and

[STATE AGENCY]

WHEREAS, [PROVIDER] (“PROVIDER”) and [STATE AGENCY] (“State”) wish to protect and preserve the confidentiality of certain information disclosed or made available to each other in connection with discussions and/or negotiations and/or an agreement regarding services contemplated by the parties; and

WHEREAS, each party will disclose valuable, proprietary and/or inside information and trade secrets or individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law secrets or to the other;

NOW THEREFORE, the parties agree as follows:

- 1. Confidentiality of Provider Information.** The Provider acknowledges and agrees that this Agreement and any and all Provider information obtained by the State in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Provider, and which gives the Provider an opportunity to obtain business advantage over competitors who do not know it or use it (“Contractor Information”).
- 2. Confidentiality of State Information.** The Contractor acknowledges that certain State Data (as defined below), to which the Provider may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law. Before receiving or controlling State Data, the Provider will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure. State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Provider agrees to keep confidential all unemployment information received from the State (“State Data”).

Contractor Information and State Data shall be referred to herein as “Confidential Information.”

- 3.** Each party agrees to use Confidential Information received from the other party only for the purposes of and in accordance with this Agreement. All proprietary rights and interests in and to a party’s Confidential Information will remain such party’s property. No rights, licenses, trademarks, inventions, copyrights, or patents are implied or granted under this Agreement.

4. The receiving party shall provide at a minimum the same care to avoid disclosure or unauthorized use of Confidential Information as it provides to protect its own similar confidential and proprietary information. It is agreed that all Confidential Information shall be retained by the receiving party in a secure place with access limited to only such of the receiving party's employees or agents who have a "need to know" such Confidential Information in pursuance of this Agreement.
5. All Confidential Information, unless otherwise specified in writing by additional agreement, shall remain the property of the disclosing party and shall be used by the receiving party only for the purpose intended.
6. The receiving party shall promptly notify the disclosing party of any request or demand by any court, governmental agency or other person asserting a demand or request for Confidential Information of the disclosing party supplied pursuant to this Agreement, so that the disclosing party may seek an appropriate protective order or otherwise defend any right it may have to maintain the confidentiality of its Confidential Information under applicable State law; provided, however, PROVIDER shall have only three business days from the date of the State's receipt of any such request in order to seek a protective order or otherwise defend its Confidential Information. PROVIDER acknowledges that State is subject to the terms of the Vermont Access to Public Records Law, 1 VSA 315 et seq. PROVIDER agrees that it will not make any claim against State if the State makes available to the public any information it receives from PROVIDER in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production.
7. This Agreement shall remain in full force and effect for a period of two (2) years, unless earlier terminated or extended as agreed by PROVIDER and State or protected for a longer period of time by law.
8. This Agreement may be terminated at any time during the term of the Agreement upon sixty (60) days written notice to the other party; provided that termination or expiration of this Agreement shall not relieve the recipient party of its obligations under this Agreement with respect to confidential and proprietary information exchanged prior to the effective date of the termination or expiration.
9. This Agreement may be executed in one or more counterparts (which may be originals, photocopies or copies sent by facsimile transmission), each of which counterparts shall be an original, but all of which shall constitute one and the same document.
10. This Agreement may not be amended except in writing by the parties' authorized representatives. There are no agreements, understandings, or representations, express or implied, not specified herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized respective representatives as of the date first herein above written.

PROVIDER:

State of Vermont

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

WORKER CLASSIFICATION COMPLIANCE REQUIREMENT

Self Reporting
Form 1 of 1

This form must be completed in its entirety and submitted as part of the response for the proposal to be considered valid.

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total projects costs exceeding \$250,000.00, requires bidders comply with the following provisions and requirements.

Bidder is required to self report the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification for worker's compensation. The state is requiring information on any violations that occurred in the previous 12 months.

| Summary of Detailed Information | Date of Notification | Outcome |
|--|-----------------------------|----------------|
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WORKER CLASSIFICATION COMPLIANCE REQUIREMENT: Bidder hereby certifies that the company/individual is in compliance with the requirements as detailed in Act 54, Section 32 of the Acts of 2009.

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

_____ Phone Number: _____
E-mail: _____ Fax Number: _____
By: _____ Name: _____
Signature (Bid Not Valid Unless Signed)* (Type or Print)

*Form must be signed by individual authorized to sign on the bidder's behalf.

WORKER CLASSIFICATION COMPLIANCE REQUIREMENT

Subcontractor Reporting Form

This form must be completed in its entirety and submitted prior to contract execution and updated as necessary and provided to the State as additional subcontractors are hired.

The Department of Buildings and General Services in accordance with Act 54, Section 32 of the Acts of 2009 and for total project costs exceeding \$250,000.00 requires bidders to comply with the following provisions and requirements.

Contractor is required to provide a list of subcontractors on the job along with lists of subcontractor's subcontractors and by whom those subcontractors are insured of workers. Include additional pages if necessary. This is not a requirement for subcontractor's providing supplies only and no labor to the overall contract or project.

| Subcontractor | Insured By | | Subcontractor's Sub | Insured By |
|----------------------|-------------------|--|----------------------------|-------------------|
| | | | | |
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| | | | | |
| | | | | |

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Title: _____

Phone Number: _____

E-mail: _____

Fax Number: _____

By: _____

Name: _____

Failure to adhere to Act 54, Section 32 of the Acts of 2009 and submit Subcontractor Reporting: Worker Classification Compliance Requirement will constitute non-compliance and may result in cancellation of contract and/or forfeiture of future bidding privileges until resolved.

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, Division 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.

5. **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

Nursing Skills Checklist

| | | | | |
|--------------------|------------------|---------|-------------------|---------|
| | CLASSROOM /LAB | | CLINICAL COMP. | |
| Student's Name | Practice Date | Initial | Date Observed | Initial |
| Name of NAEP _____ | | | | |

All skills should be signed off in the lab setting prior to students performing them in the clinical setting. Every effort should be made to have clinical opportunities available for all skills. However, if a particular skill is not available in the clinical setting (such as side rails or catheter care), the instructor should initial and circle that skill and make an explanatory note on the last page of this form.

| | | | | |
|--|--|--|--|--|
| MOBILITY/AMBULATION: | | | | |
| One person | | | | |
| Use of cane | | | | |
| Use of walker | | | | |
| Application of gait belt | | | | |
| Proper use of wheelchair | | | | |
| BEDMAKING: | | | | |
| Occupied & unoccupied | | | | |
| BODY MECHANICS: | | | | |
| Student/Caregiver | | | | |
| COMMUNICATION: | | | | |
| With verbal resident(s) | | | | |
| With non-verbal resident(s) | | | | |
| With resident(s) with cognitive impairments | | | | |
| With resident(s) with sensory loss(es) | | | | |
| Reporting any observed changes in residents to the appropriate personnel | | | | |
| Proper documentation on flowsheets | | | | |
| INFECTION CONTROL: | | | | |
| Application/removal of gloves | | | | |
| Handling soiled items | | | | |
| Handwashing | | | | |

Nursing Skills Checklist

| | CLASSROOM /LAB | | CLINICAL COMP. | |
|---|------------------|---------|-------------------|---------|
| Student's Name | Practice Date | Initial | Date Observed | Initial |
| _____ | | | | |
| Name of NAEP | | | | |
| Application of personal protective equipment | | | | |
| NUTRITION: | | | | |
| I & O documentation | | | | |
| Serving food/beverages | | | | |
| Feeding | | | | |
| CATHETER CARE: | | | | |
| Cleaning tubing | | | | |
| Drainage Bags | | | | |
| SUPPORTIVE: | | | | |
| ROM-active | | | | |
| ROM-passive | | | | |
| Alignment in bed | | | | |
| Alignment in chair | | | | |
| Position pillows | | | | |
| Support splints | | | | |
| Turning/repositioning | | | | |
| Skin protectors | | | | |
| Support hose | | | | |
| TRANSFERS: | | | | |
| Chair to commode | | | | |
| Bed to wheelchair | | | | |
| One person | | | | |
| Two person | | | | |
| Mechanical lift * | | | | |
| TOILETING: | | | | |
| Assisting with toileting | | | | |

Nursing Skills Checklist

| | CLASSROOM /LAB | | CLINICAL COMP. | |
|----------------------------------|----------------|---------|----------------|---------|
| Student's Name | Practice Date | Initial | Date Observed | Initial |
| Name of NAEP | | | | |
| Urinal | | | | |
| Bed pan | | | | |
| Adult briefs | | | | |
| Collection of urine specimen | | | | |
| VITAL SIGNS/MEASUREMENTS: | | | | |
| Temperature | | | | |
| Blood pressure | | | | |
| Radial pulse | | | | |
| Respirations | | | | |
| Weight | | | | |
| Height | | | | |
| PERSONAL CARE: | | | | |
| Bath – complete | | | | |
| Backrub | | | | |
| Lotion to bony areas | | | | |
| Peri-care | | | | |
| Nail care | | | | |
| Dressing | | | | |
| Undressing | | | | |
| Hair care | | | | |
| Eye glasses | | | | |
| Hearing aid | | | | |
| Shave | | | | |
| Shampoo | | | | |
| ORAL CARE: | | | | |
| Brushing teeth | | | | |

Nursing Skills Checklist

| | CLASSROOM /LAB | | CLINICAL COMP. | |
|------------------------|------------------|---------|-------------------|---------|
| Student's Name | Practice Date | Initial | Date Observed | Initial |
| _____ Name of NAEP | | | | |
| Denture care | | | | |
| Use of swab | | | | |
| SAFETY: | | | | |
| Use of call bell | | | | |
| Use of side rails | | | | |
| Heimlich maneuver | | | | |
| Use of bed brakes | | | | |
| Privacy Curtain | | | | |

* Per federal Dept. of Labor regulation, students who are younger than 18 years of age are prohibited from using mechanical lifts/hoists in patient care settings. If career and technical centers have such equipment available, it is up to each of those programs to decide (with their administrators/legal counsel) whether they will permit under-18 year olds to practice using mechanical lifts/hoists in the classroom/lab (non-clinical) setting.

Students younger than 18 who do not demonstrate use of mechanical lifts in either or both the lab and clinical settings will be considered to have fully met program requirements as long as the reason is noted and signed off by the instructor on this form.

| NURSE ASSISTANT STANDARD SKILLS LIST | | | | |
|---|--|--|--|--|
| | | | | |
| Student's Name | | | | |
| Program's Name | | | | |
| INSTRUCTOR'S NAME, SIGNATURE & INITIALS: | | | | |
| | | | | |
| | | | | |
| | | | | |
| STUDENT'S SIGNATURE: | | | | |
| DATE: | | | | |
| | | | | |

4131 - Deeming and Waiver of Nurse Aide Training and Competency

Evaluation (NATCEP) Requirements

(Rev. 1, 05-21-04)

The Omnibus Budget Reconciliation Act (OBRA) of 1987 prohibits SNFs and NFs from using as nurse aides any individuals who have not successfully completed a nurse aide training and competency evaluation program (NATCEP) or competency evaluation program (CEP) approved by the State. The OBRA's 1987 and 1989 deemed some individuals to meet this requirement and permitted States to waive this requirement for others. All individuals who are deemed to meet the nurse aide NATCEP requirements, or for whom the State waives the requirement to complete a CEP, must be included in the nurse aide registry described in §4141.

A nurse aide is deemed to satisfy the requirement of completing a NATCEP if, before July 1, 1989, he or she completed a nurse aide training and CEP of at least 60 hours and made up at least the difference between the number of hours in the program he or she completed and 75 hours in supervised practical nurse aide training, or in regular inservice nurse aide education.

A nurse aide is deemed to satisfy the requirement of completing a NATCEP if, before July 1, 1989, the individual was found competent (whether or not by the State) after completing nurse aide training of at least 100 hours duration.

The State may deem an individual to have completed a NATCEP if the individual completed, before July 1, 1989, a NATCEP that it determines would have met the requirements for approval at the time it was offered.

The State may waive the requirement for an individual to complete a CEP for any individual who can demonstrate to its satisfaction that he or she has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before December 19, 1989.

Any individual described above may be employed as a nurse aide by a nursing home if that individual is also competent to perform nursing or nursing-related services.

4132 - NATCEPs and CEP

4132.2 - Requirements for NATCEPs

(Rev. 1, 05-21-04)

(S&C01-20)

4132.2A - Hours of Training

(Rev. 1, 05-21-04)

A NATCEP must consist of a minimum of 75 clock hours of training in order to be approved by the State. The State has the discretion to require additional hours of training.

NOTE: Transporting residents is the only nursing home service that does not require the use of nurse aides with 75 hours of training. It was never the intent that transporting residents by driving a van or pushing a wheelchair would require 75 hours of nurse aide training. However, transferring residents, for example from bed to wheelchair, from wheelchair to the toilet or bath does require the services of a nurse aide who has completed the NATCEP.

4132.2B - Restrictions on Activities of Students in a NATCEP

(Rev. 1, 05-21-04)

The State should not approve a program unless it ensures that:

- Students do not perform any services for which they have not trained and been found proficient by the instructor; and
- Students providing services to residents are under the general supervision of a licensed nurse or an RN.

4132.2C - Instructor Qualifications

(Rev. 1, 05-21-04)

The training of nurse aides must be performed by or under the general supervision of a registered professional nurse who possesses a minimum of 2 years of nursing experience, at least one year of which must be in the provision of long-term care facility services.

Instructors of nurse aides must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides. In a facility-based program, the

training of nurse aides may be performed under the general supervision of the Director of Nursing, who is prohibited from performing the actual training.

Other individuals may supplement the instructor. Following are examples of those who might be useful in a NATCEP:

- RNs;
- Licensed practical/vocational nurses;
- Pharmacists;
- Dietitians;
- Social workers;
- Sanitarians;
- Fire safety experts;
- Nursing home administrators;
- Gerontologists;
- Psychologists;
- Physical and occupational therapists;
- Activities specialists;
- Speech/language/hearing therapists; and
- Resident rights experts.

The program may utilize individuals from fields other than those listed as examples if needed to meet the planned program objectives for a specific unit. Supplemental personnel must have a minimum of one year of experience in their fields. The State may require that these individuals be, where applicable, licensed, registered, and/or certified in their field.

4132.2D - Minimum Curriculum Requirements

(Rev. 1, 05-21-04)

The objective of NATCEPs is to enable nurse aides to provide quality services to residents. Therefore, a NATCEP must contain at least these minimum curriculum requirements for it to be approved. The State may also specify additional areas to be included.

Within the minimum 75 hours of training, at least 16 hours must be devoted to supervised practical training. Supervised practical training is defined as training in a laboratory or other setting in which the student demonstrates knowledge while performing tasks on an individual under the direct supervision of an RN or LPN. A program must also include at least 16 hours of classroom instruction prior to a trainee's direct involvement with a resident. This instruction must include the following:

- Communication and interpersonal skills;
- Infection control;
- Safety/emergency procedures, including the Heimlich maneuver;
- Promoting residents' independence; and
- Respecting residents' rights.

The curriculum must also include training in the following areas:

1. Basic nursing skills:

- a. Taking and recording vital signs;
- b. Measuring and recording height and weight;
- c. Caring for the residents' environment;
- d. Recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor. Some examples of abnormal

changes are:

- Shortness of breath;
- Rapid respiration;
- Fever;
- Coughs;
- Chills;
- Pains in chest;
- Blue color to lips;
- Pain in abdomen;
- Nausea;
- Vomiting;

- Drowsiness;
 - Excessive thirst;
 - Sweating;
 - Pus;
 - Blood or sediment in urine;
 - Difficulty urinating;
 - Frequent urination in small amounts;
 - Pain or burning on urination; and
 - Urine has` dark color or strong odor.
- e. Caring for residents when death is imminent.

2. Personal care skills:

- a. Bathing;
- b. Grooming, including mouth care;
- c. Dressing;
- d. Toileting;
- e. Assisting with eating and hydration;
- f. Proper feeding techniques;
- g. Skin-care; and
- h. Transfers, positioning, and turning.

3. Mental health and social service needs:

- a. Modifying aide's behavior in response to resident's behavior;
- b. Awareness of developmental tasks associated with the aging process;
- c. How to respond to resident behavior;
- d. Allowing residents to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and
- e. Utilizing resident's family as a source of emotional support.

4. Care of cognitively impaired residents:

- a. Techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others);

- b. Communicating with cognitively impaired residents;
 - c. Understanding the behavior of cognitively impaired residents;
 - d. Appropriate responses to the behavior of cognitively impaired residents;
- and
- e. Methods of reducing the effects of cognitive impairments.
5. Basic Restorative Services - The nurse aide should be able to demonstrate skills which incorporate principles of restorative nursing, including:
- a. Training the resident in self-care according to the resident's abilities;
 - b. The use of assistive devices in transferring, ambulation, eating, and dressing;
 - c. Maintenance of range of motion;
 - d. Proper turning and positioning both in bed and chair;
 - e. Bowel and bladder training; and
 - f. Care and use of prosthetic and orthotic devices.
6. Residents' Rights - The nurse aide should be able to demonstrate behavior that maintains residents' rights, including but not limited to:
- a. Providing privacy and maintenance of confidentiality;
 - b. Promoting the resident's right to make personal choices to accommodate their needs;
 - c. Giving assistance in resolving grievances and disputes;
 - d. Providing needed assistance in getting to and participating in resident and family groups and other activities;
 - e. Maintaining care and security of resident's personal possessions;
 - f. Providing care which maintains the resident free from abuse, mistreatment, and neglect, and reporting any instances of such treatment to appropriate facility staff; and
 - g. Avoiding the need for restraints in accordance with current professional standards.

(Rev. 1, 05-21-04)

All NATCEPs must contain competency evaluation procedures that meet the requirements specified in §4132.3.

4132.2F - Prohibition of Charges

(Rev. 1, 05-21-04)

No nurse aide who is employed by, or who has an offer of employment from, a facility on the date on which the aide begins a NATCEP may be charged for any portion of the program (including any fees for textbooks or other required course materials). If an individual who is not employed or does not have an offer to be employed as a nurse aide becomes employed by or receives an offer of employment from a facility not later than 12 months after completing a NATCEP, the State must provide payment for costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

4132.3 - Requirements for CEP

(Rev. 1, 05-21-04)

4132.3A - Notification to Individual

(Rev. 1, 05-21-04)

The State provides advance notice to any individual who takes the competency evaluation that a record of the successful completion of the evaluation will be included in the nurse aide registry (NAR).

4132.3B - Content of CEP

(Rev. 1, 05-21-04)

Competency evaluations must consist of two components: a written or oral examination and a skills demonstration program. The written or oral examination must:

- Allow aides to choose between a written and an oral examination;
- Address each item specified in §4132.2.D;
- Be developed from a pool of test questions, only a portion of which is used in any one examination;
- Use a system that prevents disclosure of both the test questions and the individual

competency evaluations; and

- If oral, must be read from a prepared text in a neutral manner.

The skills demonstration must consist of a demonstration of randomly-selected items drawn from a pool consisting of tasks generally performed by nurse aides. This pool of skills must include all of the personal care skills listed in §4132.2.D.

4132.3C - Administration of NACEP

(Rev. 1, 05-21-04)

The competency evaluation may be administered and evaluated only by:

- The State directly; or
- A State-approved entity which is not the SNF which provided the training.

The skills demonstration component of the evaluation must be:

- Performed in a facility or laboratory setting similar to the setting in which the individual functions as a nurse aide; and
- Administered and evaluated by an RN with at least one year's experience in providing care for the elderly or the chronically ill of any age.

4132.3D - Proctoring

(Rev. 1, 05-21-04)

The competency evaluation may, at the nurse aide's option, be conducted at the facility in which the nurse aide is or will be employed unless the facility is described in §4132.1.C.

The State may permit the competency evaluation to be proctored by facility personnel if it finds that the procedure adopted by the facility assures that the NATCEP:

- Is secure from tampering;
- Is standardized and scored by a testing, educational, or other organization approved by the State; and
- Requires no scoring by facility personnel.

The State retracts the right to proctor nurse aide competency evaluations from facilities in which it finds any evidence of impropriety or tampering by facility staff.

4132.3E - Successful Completion of CEP

(Rev. 1, 05-21-04)

The State establishes a standard for successful completion of the competency evaluation. To complete the competency evaluation successfully, an individual must pass both the written or oral examination and the skills demonstration. A record of successful completion of the competency evaluation must be included in the NAR described in §4141 within 30 days of the date the individual is found to be competent.

4132.3F - Unsuccessful Completion of Competency Evaluation

(Rev. 1, 05-21-04)

If an individual does not complete the evaluation satisfactorily, the individual must be advised:

- Of the areas in which he or she did not pass; and
- That he or she has at least three opportunities to take the evaluation.

The State may impose a maximum on the number of times an individual may attempt to complete the competency evaluation successfully, but the maximum may be no less than three.