

Vermont Department of Health

Sealed Bid

Request for Proposal

Project Title: New Syringe Services Programs

Agreement Period: TBD

Date Opportunity for Funding Issued: 12/19/2024

Date of Bid Closing: 1/21/2025

Date of Bid Opening: 1/22/2025

Location of Bid Opening: Virtual

Single Point of Contact: Daniel Daltry (Other methods of communication are not permitted and shall go unanswered.)

Contact Address:

Phone: 802-863-7240

Email: daniel.daltry@vermont.gov

1. Overview

Request for Proposals

The Vermont Department of Health, HIV, STD, and Hepatitis C program is seeking proposals from eligible organizations to operate new Syringe Services Programs (SSPs) to increase the geographic distribution of harm reduction services in Vermont.

Eligible organizations must:

- Be registered as [a corporation with the State of Vermont](#); and
- Not be debarred. [Debarment List](#) can be found here.
- Meet the State's insurance requirements (see Attachment C, Section 8 and Attachment D for minimum requirements).
- Adhere to the State's standard terms and conditions (see Attachments C, D, E, and F) including the organization must establish and maintain effective internal control over the award to provide reasonable assurance that the organization is managing the award in compliance with standard internal control practices. See "Standards for Internal Control in the Federal Government" (<https://www.gao.gov/greenbook>) 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).
- Have approval from the Commissioner of Health prior to the execution of the grant agreement, to operate a new Syringe Services Program
- Be in compliance with the Syringe Services Program Operating Guidelines (Exhibit A).

If an organization is unable to adhere to all terms and conditions outlined in Attachments C, D, E, and F, indicate in the Cover Letter of organization's proposal which provision(s) the organization is unable to accept and the reason.

Selected bidders that are not yet an approved new SSPs will need to be approved as a new SSP by the Commissioner of Health before the grant agreement is executed.

Timetable: The table below presents the VDH schedule for this Request for Proposal (RFP). Please note that the VDH may change this schedule at any point.

- **RFP Published:** 12/18/24
- **Written questions due:** 1/2/24
- **Response to questions:** 1/8/25

- **Proposal due:** 1/21/25

Proposal Submission: To be considered for review, proposals and signed cover letters must be submitted to Daniel.daltry@vermont.gov at the Vermont Department of Health prior to 3:00 PM Eastern Time on 1/21/2025. The submitted cover letter and proposal must be provided electronically in a pdf format.

Proposals not submitted to Daniel.daltry@vermont.gov along with a signed cover letter by this date and time will not be considered. Proposals or unsolicited amendments submitted after that time will not be accepted and will be returned to the bidder. There are no exceptions to the closing date conditions.

Funding Available: The funding source for this RFP is Act 113, Sec. E113(a)(5) (2024). The total amount of funding available is \$350,000.00. No funding match is required. Funding is subject to the availability of appropriated funds.

Questions and Answers: All questions must be submitted in writing to Daniel.daltry@vermont.gov by 3:00 pm Eastern Time on 12/30/2024. Responses will be posted to <https://www.healthvermont.gov/alcohol-drugs/grantees-contractors/requests-proposals-information-and-applications> by 3:00 pm Eastern Time on 1/6/2025. Any questions submitted following the last day of the question period to the RFP will not receive a response. No additional correspondence may be initiated from an organization to the Department of Health regarding its RFP proposal unless it is to update the organization's contact information or to retract the organization's proposal. The Department will contact an organization for proposal clarification purposes and/or to notify the organization of an award.

Bidders Conference Call: There will be no bidders conference call for this RFP.

Organization Responsible for Cost of Proposal Development and Submission: Any costs incurred by an organization in the preparation and submission of the organization's proposal will not be reimbursed by the State.

Health Equity: Organization must align with Health Equity pursuant to <https://www.healthvermont.gov/about/vision/health-equity>, including but not limited to the provision of culturally and linguistically appropriate care, and language access, interpretation and translation services.

Proposal Review: The State reserves the right to accept or reject proposals. Accepted proposals will be reviewed in accordance with this RFP. If a proposal is selected, the chosen bidder(s) will be invited to negotiate a grant agreement for the activities outlined in this RFP.

Proposal Requirements:

To be considered for selection, bidders must complete all responses to this RFP

in the format described in this document. The State reserves the right to eliminate from further consideration any proposal deemed to be substantially or materially unresponsive to the requests for information contained herein.

The proposal must be organized in the order described herein, including a signed cover letter and responses to Response Sections I through VII, using the numbering designations outlined. Failure to use the numbering designations may result in scores of zero, as reviewers may be unable to find answers that correspond to numbered specifications and/or requirements.

Please note that materials submitted in response to this RFP are subject to the Public Records Act.

Cover Letter: Proposals must be accompanied by a cover letter signed and dated by a person authorized to legally bind the organization.

The cover letter must include:

- I. The name, address, principal place of business, telephone number, and email address of the organization;
- II. The name, telephone number, email address, and position of the organization's primary point of contact;
- III. A description of the organization, including the corporation type and the year the organization was incorporated in Vermont (in its current corporate status);
- IV. If applicable, the agreement number(s) for grants and/or contracts that the organization currently has with the Vermont Department of Health;
- V. The proposed grant term (this may be up to 16 months);
- VI. The funding amount requested;
- VII. An assurance that the organization will complete and submit the data requested by the Department in accordance with the grant agreement;
- VIII. If applicable, the provisions of Standard State Grant Attachment(s) C, D, E, and F that the organization cannot agree to and the reason compliance with these provisions is not possible; and,
- IX. Address of the facility from which the organization would operate the SSP.

Proposal Format: Proposals must be no longer than 15 pages, excluding cover letter, staff résumés, the cost proposal (Excel spreadsheet), references, and any applicable letters of commitment. The organization's proposal must include, at a minimum the following information, organized as follows:

Response Section I: Balance Sheet and Financial Statements, Vermont Tax Certificate, and Insurance Certificate

- I. Balance sheet and financial statements showing that the vendor has been in business continually for the last three (3) years;
- II. Insurance Certificate;
- III. Vermont Tax Certificate;
- IV. Statement outlining the organization's acceptance of conditions outlined in the RFP and with the State's subrecipient agreement provisions.

Response Section II: General Background and Qualifications (10 points)

At a minimum, proposals must describe the organization's background, experience, and qualifications to provide SSP services, including:

- I. Current and past services provided for individuals with substance use disorder;
- II. Summary of the administrative and organizational capacity to establish and implement a SSP program, including staff experience and qualifications;
- III. Population served or intended to serve, prioritizing populations most at risk for overdose and blood-borne infectious diseases;
- IV. The geographic area where the organization will deliver SSP services and how this will expand the geographic distribution and reach of SSP services in the state;
- V. Work with individuals from diverse social, economic, religious, racial, ethnic, gender, and language backgrounds; and
- VI. Program and/or project highlights and accomplishments from last three years that demonstrate successful program implementation and/or project completion.

Response Section III: Scope and Description of Services (40 points)

Proposals must include:

- I. Description of the location(s) where SSP services will be delivered and the process utilized by the organization to identify the location(s).
- II. Description of the population(s) to be served by the SSP. Included should be a description of how the population(s) was identified by the organization and the estimated number of unique people to be served during the proposed grant term.
- III. Description of the services the organization will provide throughout the grant term, ensuring alignment with the required services included in the Operating Guidelines for Syringe Services Programs (Exhibit A).
 - a. If the described services include Partnership Delivery, being co-located with other organizations, or contracting with other organizations to provide services described in this proposal, list any partners involved with a description

- of the partners' roles.
 - b. Letters of Commitment from any organizations described in this section are required to be submitted as part of this proposal.
- IV. Describe how a focus on the identified population(s) utilizing the proposed services will address health equity, reduce overdose risk factors, and increase protective factors for the identified population(s).
- V. Describe the staffing model needed to perform the proposed services, including if any new positions would need to be added to deliver these services.

Response Section IV: Implementation Plan (15 points)

- I. Describe the anticipated implementation timeline for how the organization will implement the approach described in Response Section III within the grant term proposed in the organization's cover letter. program including major milestone completion dates. The implementation plan must include:
 - a. A description of start-up, implementation, and service provision activities;
 - b. Timeline for the start and completion of described activities; and,
 - c. Staff position(s) responsible for completion of each described activity.
- II. Describe the project management plan for monitoring progress of the anticipated timeline to ensure timely completion of each described activity.

Response Section V: Reporting and Evaluation (10 points):

Regular progress reports and data submission will be required as part of an executed grant agreement. Payment of invoices will be contingent on the receipt, review, and approval of required reporting, completion/submission of data, and meeting and/or exceeding of required performance measures.

Describe the data collection and maintenance methods for the following:

- I. Participant identifier
- II. Record of unique people served
- III. Record of service provided and referrals made for each participant

Response Section VI: References

- I. Provide the name, title, phone number, and email address of at least three (3) references that have experience working with, or receiving services from, the organization.

Response Section VII: Budget and Narrative (25 points)

- I. Applicants must provide an itemized budget and budget narrative.
 - a. The budget must align with the grant term described in the cover letter, the implementation plan, and the scope of work.
 - b. Applicants must identify any other sources of funding, both in-kind and monetary, that will be used to support the SSP during the grant term.
 - c. The budget should be reasonable and reflect the scope of responsibilities required to accomplish the goals of the SSP project.
 - d. Grant funds may only be used to support services that are specific to this award; grant funding may not be used to supplant or duplicate existing funding streams.
 - e. Personnel expenses included in the budget must relate to client services to receive funding as a personnel line item. Staff positions not related to direct service delivery must be included in the organization's allocated indirect rate (i.e., 15% de minimus).
- II. Describe the plan for sustainability once the proposed grant term ends.

Exhibit A:

Vermont Department of Health Operating Guidelines for Syringe Services Programs

I. Introduction

Organized community-based needle exchange programs, also referred to as Syringe Services Programs or SSPs, are community-based prevention programs that provide a lifeline to people who use drugs or who have a substance use disorder. They provide a range of harm reduction services, including access to new needles and syringes and disposal of used needles, syringes, and injection equipment; linkage to substance use disorder treatment; and access to vaccination, testing, and care and treatment for infectious diseases.

II. Program Requirements

Approval

SSPs shall be approved by the Commissioner of Health under 18 V.S.A. § 4478. SSPs shall comply with these operating guidelines and shall operate in a manner consistent with the provisions of 10 V.S.A Chapter 159 (waste management; hazardous waste) and any other applicable laws.

Approach to Services Delivery

1. SSPs will provide equitable, low-barrier access to anonymous and confidential services.
2. Services delivered will be free and person-centered.
3. SSPs will be participant-driven and empower individuals to be agents of their own change.
4. Services delivered will incorporate the lived and living experiences of people who use drugs.

Delivery of Syringes and Supplies

1. SSPs shall provide wide access to syringes and supplies through a layered approach to delivery, including through using the modalities identified below. SSPs shall provide services using the Primary Exchange modality. In addition to the Primary Exchange modality, SSPs are encouraged, but not required, to use the Secondary Exchange, Peer-Delivered Exchange, and/or Partnership-Delivery Exchange modalities described below. SSPs should consider participant and community needs and SSP capacities when determining whether to use these additional modalities.
 - a) Primary Exchange (*required*) – SSP participant goes to location-based or mobile-based syringe exchange and picks up syringes and/or supplies OR participant arranges to meet SSP staff for syringes and/or supplies.

- b) Secondary Exchange (*optional*) – SSP participant picks up syringes and/or supplies at the Primary Exchange to distribute to other individual(s), who are usually known to SSP.
 - c) Peer-Delivered Exchange (*optional*) – A trained and supervised SSP participant serves as a peer outreach and delivery provider, bringing syringes and/or supplies from the SSP to a wider community of peers who use drugs, who are usually not known to the SSP, and who are not SSP participants themselves.
 - d) Partnership Delivery (*optional*) – Other community service organizations make syringes and/or supplies available to their participants based on an arrangement with a SSP, such as through sponsorship of a staff member or volunteer to be trained by the SSP.
2. SSPs shall distribute overdose reversal medications.
 3. SSPs shall provide drug- checking test strips, which SSPs shall use in accordance with [guidelines established by the Health Department](#).
 4. SSPs shall emphasize use of opt-in screening tools and minimal use of forms to reduce barriers to participant access to needed services.
 5. SSPs shall adopt plans for handling and disposing of used needles and syringes that are consistent with OSHA's Bloodborne Pathogen Standards, 29 CFR § 1910.1030.
 6. SSPs shall develop and maintain protocols for infectious disease, post-exposure treatment.
 7. SSPs shall operate in compliance with HIPAA, 42 C.F.R. Part 2 and all applicable laws regarding participant confidentiality.

Syringe Services Program Staff and Volunteers

SSP staff and volunteers shall

1. Be trained annually and regularly supervised by their organization on the following topics:
 - a. Safe needle and injection supply disposal.
 - b. Confidentiality of participant information, including 42 C.F.R. Part 2, HIPAA, and other applicable laws.
 - c. Harm reduction.
 - d. Substance use practices and consumer impacts, particularly related to opioid use, identification of opioid overdoses, and use of overdose reversal medications
 - e. Substance abuse treatment referral.

- f. Medical referral.
 - g. Referral to other community resources.
 - h. Assessment and response to emergency situations.
 - i. Setting and maintaining boundaries.
 - j. Infection control procedures, needlestick protocol, and standard universal precautions (including info on blood-borne pathogens, hepatitis B immunization and TB screening).
2. Provide, or refer their participants to, free, confidential HIV/HCV testing in either community-based or medical settings.
 - a. Program staff and volunteers who have completed Health Department training may provide HIV/HCV testing in accordance with the Health Department testing protocol.
 - b. Program staff and volunteers who are not trained to provide HIV/HCV testing directly to participants shall instead refer and link participants to other options for testing, including other test providers or other internal staff or volunteers who are trained to provide HIV/HCV testing.
 - c. Staff and volunteers shall refer pregnant people and people with other medical conditions to medical or other appropriate testing providers outside the SSP.
 - d. Staff and volunteers shall document participant tests provided, and referrals and links to testing services.
 - e. If SSP staff or volunteers performs the HIV/HCV testing, the SSP shall submit reports to the Department of Health in accordance with 18 V.S.A. § 1001.
 3. Refer individuals to prevention programs related to transmission of HIV, viral hepatitis, and other blood-borne and sexually transmitted infections if such programs cannot be offered on site. SSPs shall also provide information and referrals including to substance use treatment programs, case management services, and other relevant health care options.
 4. Attend training offered by the Health Department regarding referral tracking.
 5. Develop safety protocols to guide outreach workers in keeping themselves safe while they are engaged in syringe exchange. At a minimum, each SSP that performs outreach shall
 - a. Require that outreach workers carry an ID card during all exchanges.
 - b. When possible, arrange for outreach to be done in teams.
 - c. Require outreach workers to follow the SSP's safety protocol.
 - d. Develop a tag in/tag out system to ensure that responsible parties at the SSP are aware of each outreach worker's whereabouts.
 - e. Work with parties involved (business community, private

landowners), to ensure the outreach site is approved for use.

Community Engagement

1. SSPs shall demonstrate good faith efforts to maintain open communication about the SSP's operations with community in the SSP's service area, including local government, health care providers, law enforcement, and others.
2. SSPs shall convene an advisory committee that meets quarterly for the first two years of the program's operation.
 - a. If after two years of operation, community support among local residents, business, and law enforcement continues to exist., the SSP will be allowed to hold meetings of the advisory committee at least once a year and as needed.
3. The advisory committee shall consist of individuals who support the presence of a SSP in the community and prioritize the safety of the participants, as well as community members. The advisory committee shall, at a minimum, include members from
 - a. The SSP.
 - b. Local businesses.
 - c. Local law enforcement.
 - d. Community members.
4. The advisory committee shall provide guidance to the SSP on the services and methodology that works best for the local community and will support communication between the SSP and the community.
5. The following people from the SSP's service area may be invited to attend the advisory committee meetings:
 - a. SSP staff.
 - b. Health care workers.
 - c. Members of the public.
 - d. People with a history of drug use.
 - e. Staff from drug treatment facilities.
 - f. Business owners.
 - g. Community leaders.
 - h. Law enforcement.
 - i. Other individuals and organizations within the SSP's service area.
6. SSPs shall record in writing community and law enforcement concerns related to the operation of the SSP in the community. When possible, SSPs shall attempt to resolve the concerns with the community. Recorded concerns about the SSP's operations should be reported to the Health Department and the advisory committee.

7. SSP providers may temporarily deliver SSP services out of a site in its service area other than the one the Commissioner approved the SSP to operate out of (i.e., a “host site”), at the discretion of the host and the SSP. The SSP shall not operate at a host site for more than seven (7) consecutive days and shall not operate at the host site more than fourteen (14) days in one year. If the SSP wishes to operate at the host site beyond seven (7) consecutive days or more than fourteen (14) days in one year, the SSP shall seek approval to use the location as a satellite location in accordance with subsection 8, below.
8. SSPs may establish regular or frequent operations (i.e., more than seven consecutive days or more than fourteen days in one year) at a location in its service area other than the one the Commissioner approved the SSP to operate out of (i.e., a satellite location). Prior to establishing operations at a satellite location, a SSP shall consult its advisory committee and obtain approval from local businesses close to the satellite location and the Vermont Department of Health.
9. SSPs may offer participation incentives to participants, as determined by each SSP and as appropriate for local circumstances. No SSP is required to offer incentives.
10. SSPs shall share knowledge with participants of low-barrier treatment providers that adhere to a harm-reduction philosophy so that they will be able to provide a range of treatment referral options within and outside of the SSP service areas.

Participants

1. SSPs shall require all individuals, prior to accessing SSP services, to enroll as a participant and to provide the information necessary for the SSP to construct a unique identifier that maintains the participant’s confidentiality.
2. SSPs shall construct a unique identifier for each participant using the following participant information:
 - a. First three letters of mother’s first name.
 - b. Two-digit day of birth.
 - c. Middle initial.
 - d. Last two digits of birth year.
 - e. M, F, or T for client participant’s gender.
3. SSPs shall provide identification cards and a copy of the Vermont paraphernalia law (18 V.S.A. § 4478) for staff, volunteers, and participants involved in transporting, exchanging, or possessing needles/syringes.
 - a. The card shall identify the agency operating the SSP.

- b. Cards issued by SSPs to participants shall include the participant's unique identifier.
 - c. Cards issued by SSPs to individuals shall provide the contact information of a SSP representative who is available to respond to questions or concerns.
4. SSPs shall make Health Department contact information available to participants or local residents who have program questions, comments, or suggestions.
5. SSPs shall only exchange syringes and safe injection supplies through a person-to-person interaction between participants and program staff and volunteers. SSPs shall not send syringes or other injection supplies to participants through the mail.
6. SSPs shall apply harm-reduction principles and work to establish trusted relationships with program participants.
7. As participants express readiness, SSPs shall provide information and educational materials on a range of health issues of concern for people who use drugs. Topics may include, but are not limited to, overdose prevention, safer injection, wound-prevention techniques, wound care, safe disposal of , preventing needle sticks, and the risks, prevention, testing and treatment of infectious diseases, including HIV and viral hepatitis.
8. SSPs shall provide syringes to any enrolled participant who is 18 years of age or older.
9. SSPs shall develop appropriate referral mechanisms for individuals under 18 who do not meet one of the requirements to enroll in a SSP, as described below. Individuals under 18 shall be permitted to enroll in a SSP only under the following circumstances:
 - a. An individual age 12-17 may enroll in a SSP only if
 - i. The individual has documented parental consent authorizing the individual to enroll in the SSP;
 - ii. In accordance with 18 V.S.A. § 4226, the individual has documentation from a physician verifying that the individual is dependent on regulated drugs, as defined in 18 V.S.A. § 4201; or
 - iii. The individual provides documentation that they are an emancipated minor in accordance with 12 V.S.A. § 7151.
 - b. SSPs shall collect documentation of parental consent, physician verification, or emancipation status before services are provided to an individual ages 12-17 years.

- i. The Health Department has sample physician and parental consent forms to use for this purpose.
- ii. An emancipated minor must provide documentation of their emancipation status, , such as a marriage certificate dated prior to July 1, 2023, military papers demonstrating that the minor is on active duty with any of the U.S. Armed Forces, or a court order.
- iii. SSPs shall keep participant documentation for individuals between the ages of 12 and 17 in a secure, locked file.

10. SSP participant identification cards for participants ages 12-17 shall contain the same information as cards for adults.
- a. SSP identification cards shall not be issued unless documentation of parental consent, physician verification, or emancipation status is on file.

State oversight and reporting

1. A SSP shall collect and maintain the following data. This data will be reported annually in aggregate form to the Health Department.
 - a. Number of program participants.
 - b. Year of birth of participants.
 - c. Gender of participants.
 - d. County of residence of participants.
 - e. Race of participants (report required only when data group size is greater than three).
 - f. Number of syringes distributed each month.
 - g. Number of syringes collected each month.
 - h. Number of hepatitis C tests performed.
 - i. Number of tests that were positive for hepatitis C.
 - j. Number and type of referrals made to participants.
 - k. Names, positions, training, and titles of current employees and volunteers.
 - l. Any other data demonstrating program effectiveness.

2. The SSP shall provide information about staff and volunteer training occurring at the request of the Health Department. Information must include:
 - a. Which individuals received training, including the name, title, and position of the staff member or volunteer.
 - b. The training topics.
 - c. The name of the organization or the title of the person who provided the training.

3. The Health Department shall conduct site visits of the SSP once a year at a time to be chosen by the Department. The Department shall inform the SSP prior to the site visit.

III. Approval to Operate

Prior to operating a SSP, applicants must receive approval from the Commissioner of Health. To obtain approval, applicants must submit an application, available from the Department's HIV/STI/Hepatitis C Program, demonstrating the ability to operate a SSP in compliance with Part II of these Operating Guidelines.

Approval to operate a SSP expires one year from the date of approval, as noted in the letter of approval sent to the SSP by the Commissioner of Health. Applications for continued approval must be resubmitted annually.

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND
GRANTS
REVISED OCTOBER 1, 2024

“Attachment C: Standard State Provisions for Contracts and Grants”
(revision version dated October 1, 2024) constitutes part of this Agreement and is hereby incorporated by reference as if fully set forth herein and shall apply to the purchase of all goods and/or services by the State under this Agreement.

A copy of this document is available online at:
<https://bgs.vermont.gov/purchasingcontracting/forms>.

ATTACHMENT D
INFORMATION TECHNOLOGY PROFESSIONAL SERVICES
TERMS AND CONDITIONS (rev. 01/12/2024)

1. OWNERSHIP AND LICENSE IN DELIVERABLES

1.1 Contractor Intellectual Property. Contractor shall retain all right, title and interest in and to any work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements and any other intellectual property, tangible or intangible, that has been created by Contractor prior to entering into this Contract (“Contractor Intellectual Property”). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the items that Contractor is required to deliver to the State under this Contract, including Work Product (“Deliverables”), the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to use any such Contractor Intellectual Property that is incorporated into Work Product.

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

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

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

1.3 Work Product. All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and

all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein.

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

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State’s internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State’s obligations with respect to Confidential Information, authorize others to do the same on the State’s behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

2. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

2.1 For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result

of a breach of this Contract); (b) was in the receiving party's possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

2.2 Confidentiality of Contractor Information. The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with the performance of this Contract 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 Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

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

Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

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

3. SECURITY OF STATE INFORMATION.

3.1 Security Standards. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

3.2 Security Breach Notice and Reporting. The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security

breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a "Security Breach"), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or, if applicable, Vermont Department of Financial Regulation ("DFR"), within fourteen (14) business days of the Contractor's discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor's subcontractors, affiliates or agents which may be "data collectors" hereunder.

The Contractor agrees to fully cooperate with the State and assume responsibility at its own expense for the following, to be determined in the sole discretion of the State: (i) notice to affected consumers if the State determines it to be appropriate under the circumstances of any particular Security Breach, in a form recommended by the AGO; and (ii) investigation and remediation associated with a Security Breach, including but not limited to, outside investigation, forensics, counsel, crisis management and credit monitoring, in the sole determination of the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

4. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

4.1 General Representations and Warranties. The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no pending litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the services as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the services or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

4.2 Contractor's Performance Warranties. Contractor represents and warrants to the State that:

- (i) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (ii) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's

negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

- (iii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

5. REMEDIES FOR DEFAULT. In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

6. TERMINATION

6.1. Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom State Data, State Intellectual Property or other State information and materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting any and all State data, in a format usable without the use of the Services and as agreed to by State, at no additional cost. Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

If the State determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Contractor and the State shall mutually prepare a Transition Plan identifying transition services to be provided.

6.2. Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to State all State Intellectual Property and State Data (including without limitation any Deliverables for which State has made payment in whole or in part), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.

7. DESTRUCTION OF STATE DATA. At any time during the term of this Contract within thirty days of (i) the State's written request or (ii) termination or expiration of this Contract for any reason, Contractor shall securely dispose of all copies, whether in written, electronic or other form or media, of State Data according to National Institute of Standards and Technology (NIST) approved methods, and certify in writing to the State that such State Data has been disposed of securely. Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location according to National Institute of

Standards and Technology (NIST) approved methods and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.

8. **SOV Cybersecurity Standard Update 2023-01:** Contractor confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with *State of Vermont Cybersecurity Standard 2023-01*, which prohibits the use of certain branded products in State information systems or any vendor system that is supporting State information systems, and is available on-line at:

<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

**ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT**

SOV CONTRACTOR/GRANTEE/BUSINESS ASSOCIATE:

SOV CONTRACT NO. _____ CONTRACT EFFECTIVE DATE:

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its **[Insert Name of AHS Department]** (“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.

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

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

Inspection and Retention of Records: In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed

under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

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

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

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

Federal Medicaid System Security Requirements Compliance: Party shall provide a security plan, risk assessment, and security controls review document within three months of the start date of this Agreement (and update it annually thereafter) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

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

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

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

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

5. **Non-Discrimination:**

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by State of Vermont and/or federal funds.

Party further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. **Employees and Independent Contractors:**

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

7. **Data Protection and Privacy:**

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

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

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

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

privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

Data Breaches: The notice required under the Use and Protection of State Information terms of Attachment C shall be provided to the Agency of Digital Services Chief Information Security Officer. <https://digitalservices.vermont.gov/about-us/contacts>. Party shall in addition comply with any other data breach notification requirements required under federal or state law or Attachment E.

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

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

Reporting of Abuse, Neglect, or Exploitation. Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. **Information Technology Systems:**

Computing and Communication: Party shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Party as part of this agreement. Options include, but are not limited to:

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

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

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

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

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of

2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property.

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

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

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

10. **Other Provisions:**

Environmental Tobacco Smoke. Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or

the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

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

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

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

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

AHS ATT. F 6/19/2024