

**STATE OF VERMONT  
DEPARTMENT OF BUILDINGS & GENERAL SERVICES  
OFFICE OF PURCHASING AND CONTRACTING  
133 STATE STREET, FIFTH FLOOR  
MONTPELIER, VERMONT 05633-8000**

**TO:** Note to File

**DATE:** February 28, 2023

**SUBJECT:** Translation and Interpretation Contract 45224 Propio LS LLC

Effective January 1, 2023 Telelanguage Inc changed ownership with a new TIN and are now operating as Propio LS LLC.

Telelanguage Inc, Contract #41161, had an initial term of 2 years, Original Contract State Date January 1, 2020 to December 31, 2022. CO2 for Contract #41161 changed the VISION contract number to 44476 and extended the terms through December 31, 2023. A new Vision contract number was generated because Telelanguage changed its TIN but kept the same name. In January OPC was informed that Telelanguage went through another TIN change as well as a name change that requires a novation. The new Contract #45224 with Propio LS LLC will continue to provide the same service and rates.

STATE OF VERMONT  
DEPARTMENT OF BUILDINGS AND GENERAL SERVICES OFFICE OF  
PURCHASING AND CONTRACTING.  
(NOVATION AND AMENDMENT)

It is hereby agreed by and among the State of Vermont, Department of Buildings and General Services Office of Purchasing and Contracting.(hereinafter called "State"), Telanguage Inc a Corporation with a principal place of business in Portland, OR hereinafter called "Telanguage Inc") and Propio LS LLC, a Limited Liability Company with a principal place of business in Overland Park, KS (hereinafter called "Contractor"), that the Contractor intends to assume all of the rights, benefits, duties and obligations of Propio LS LLC under the Contract between the State and Telanguage Inc dated as of January 01, 2021, Contract #44476, as amended to date (the "Contract"), and that the Contract is hereby amended as follows:

- I. Novation. The State and Telanguage Inc effect the novation of the Contract (the "Novation") to substitute the Contractor for Telanguage Inc, for all purposes of the Contract. The State hereby consents to such Novation. Contractor hereby accepts the Novation and assumes all rights, benefits, duties, undertakings, liabilities and obligations of Telanguage Inc, under the Contract.

Telanguage Inc hereby releases the State from the State's undertakings, obligations, duties and liabilities with respect to Telanguage Inc, under the Contract following the effective date of this Novation.

Contractor shall furnish to the State a new certificate of insurance consistent with the coverages required under the Contract and properly endorsed with coverage for claims or occurrences for the entire contract period.

- II. Amendment. The Contract is hereby amended to replace all references in the Contract to Telanguage Inc with references to Propio LS LLC.
- III. Effective Date. The effective date of this Novation and amendment shall be February 14, 2023.
- IV. Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this Novation and amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.
- V. Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

VI. Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this Novation and amendment is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Contractor further certifies under pains and penalties of perjury that, as of the date that this Novation and amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>

Except as modified by this Amendment No. 1, all provisions of the Contract remain in full force and effect.

For State administrative purposes, upon signing of this Novation and amendment, the contract number will be changed to 45224 with a maximum amount of \$301,452.62.

The signatures of the undersigned indicate that each has read and agrees to be bound by this Novation and amendment to the Contract.

**STATE OF VERMONT**

**Telelanguage Inc**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** Jennifer M.V. Fitch

**Name:** \_\_\_\_\_

**Title:** BGS Commissioner

**Title:** \_\_\_\_\_

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

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

**Propio LS LLC**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

STATE OF VERMONT  
CONTRACT AMENDMENT

It is hereby agreed by and between the State of Vermont, Department of Buildings and General Services, Office of Purchasing & Contracting (the "State") and Telelanguage Inc, with a principal place of business in Portland, OR (the "Contractor") that the contract between them originally dated as of January 1, 2021 Contract #41161, as amended to date, (the "Contract") is hereby amended as follows:

- I. **Contract Number.** Contract #41161 has been changed to #44476. All references to #41161 are changed to #44476. All invoices shall reference #44476. All other terms and conditions of the Participating Addendum remains the same.
- II. **Contract Term.** The Contract end date, wherever such reference appears in the Contract, shall be changed from December 31, 2022 to December 31, 2023. The Contract Term may be renewed for one additional one-year period at the discretion of the State.

**Taxes Due to the State.** Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

**Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs).** Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

**Certification Regarding Suspension or Debarment.** Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Contractor further certifies under pains and penalties of perjury that, as of the date this contract amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>

**State and Federal Terms for Products and Services.** Contractor agrees that "STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction) for all Contracts and Purchases of Products and Services Using Federal Funds (Revision date: July 28, 2022)" which is attached as Attachment E to this amendment, applies to any products or services provided to the State, at any time, when using federal funds.

This document consists of 5 pages. Except as modified by this Amendment No. 2, all provisions of the Contract remain in full force and effect.

The signatures of the undersigned indicate that each has read and agrees to be bound by this Amendment to the Contract.

**STATE OF VERMONT**

**TELELANGUAGE INC**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** Jennifer M.V. Fitch

**Name:** \_\_\_\_\_

**Title:** BGS Commissioner

**Title:** \_\_\_\_\_

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

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

STATE OF VERMONT  
CONTRACT AMENDMENT

It is hereby agreed by and between the State of Vermont, Department of Buildings and General Services, Office of Purchasing and Contracting (hereinafter called "State"), and Telelanguage Inc. with a principal place of business in Portland, OR (the "Contractor") that the contract between them originally dated as of January 1, 2021, Contract # 41161, as amended to date, (the "Contract") is hereby amended as follows:

- I. **Maximum Amount.** The maximum amount payable under the Contract, wherever such reference appears in the Contract, shall be changed from \$500,000.00 to \$1,000,000.00, representing an increase of \$500,000.00.

Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Contractor further certifies under pains and penalties of perjury that, as of the date this contract amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>

This document consists of 2 pages. Except as modified by this Amendment No. 1, all provisions of the Contract remain in full force and effect.

*[Remainder of Page Intentionally Left Blank]*

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

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

(Revision date: July 28, 2022)

**PROCUREMENT OF RECOVERED MATERIALS**

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

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

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

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

**CLEAN AIR ACT**

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

**FEDERAL WATER POLLUTION CONTROL ACT**

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the State of Vermont and understands and agrees that the State of Vermont will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA. **a.** Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

**CONTRACTOR BREACH, ERRORS AND OMISSIONS**

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



3. The rights and remedies of the State provided for under this contract are in addition to any other rights and remedies provided by law or elsewhere in the contract.

#### **TERMINATION FOR CONVENIENCE**

1. General

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

2. Contractor Obligations

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

- a. To the extent specified in the Notice of Termination, stop work under the Contract on the date specified.
  - b. Place no further orders or subcontracts for materials, services, and/or facilities except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
  - c. Terminate and cancel any orders or subcontracts for related to the services, except as may be necessary for completion of such portion(s) of the work under the Contract as is (are) not terminated.
  - d. Transfer to the State all completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the State.
  - e. Take other action as may be necessary or as directed by the State for the protection and preservation of the property related to the contract which is in the possession of the contractor and in which the State has or may acquire any interest.
  - f. Make available to the State all cost and other records relevant to a determination of an equitable settlement.
3. Claim by Contractor

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

4. Negotiation

Contract #41161  
Amendment #2

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

The signatures of the undersigned indicate that each has read and agrees to be bound by this Amendment to the Contract.

**STATE OF VERMONT**

**TELELANGUAGE INC**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

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

## STANDARD CONTRACT FOR SERVICES # 41161

1. **Parties.** This is a contract for services between the State of Vermont, Department of Buildings and General Services, Office of Purchasing and Contracting. (hereinafter called "State"), and Telelanguage Inc, with a principal place of business in Portland, OR, (hereinafter called "Contractor"). Contractor's form of business organization is Corporation. It is Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is services generally on the subject of translation & I=interpretation services. detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$500,000.00.

4. **Contract Term.** The period of Contractor's performance shall begin on January 1, 2021 and end on December 31, 2022. The Contract Term may be renewed for two additional one-year period at the discretion of the State.

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

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for all services provided to and accepted by the State prior to the effective date of termination.

8. **Attachments.** This contract consists of 20 pages including the following attachments which are incorporated herein:

Attachment A - Statement of Work

Attachment B - Payment Provisions

Attachment C – "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 12/15/2017)

Attachment E - Business Associate Agreement (BAA)

Attachment F - Agency of Human Services' Customary Contract/Grant Provisions

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

(1) Standard Contract

(2) Attachment C (Standard State Provisions for Contracts and Grants)

(3) Attachment A

(4) Attachment B

(5) Attachment E

(6) Attachment F

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

By the State of Vermont:

By the Contractor:

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

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

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Jennifer Fitch

Name: \_\_\_\_\_

Title: \_\_\_\_\_ Acting Commissioner

Title: \_\_\_\_\_

Buildings & General Services

## ATTACHMENT A (SCOPE OF WORK)

### STATEWIDE Translation and Interpretation services

1. Contractor shall incorporate the ability to incorporate graphic layouts into translated materials.
2. Contractor shall provide a dedicated toll-free access number and unique security ID for service access.
3. Contractor shall provide tailored supplemental information fields for call tracking and trending by location.
4. Contractor shall provide on demand and scheduled pre-qualified, tested and industry-specialized language professionals in over 150 languages.
5. Contractor shall provide no cost user's guide and language identification card- electronic or hard copies if requested,
6. Contractor shall provide the following client service support, training and outreach programs.
  - i. Provide toll-free 24-hour technical support
  - ii. Provide complaint response within 24 hours of reported incident
  - iii. Provide complaint resolution within 72 hours of response time
7. Contractor shall provide monthly billing and call detail report access as
  - i. Provide monthly invoice and call detail report statements by Account ID code to each account's business manager.
  - ii. Monthly statements are issued "electronically" by the fifth business day of the following month
  - iii. Monthly statements are issued "postal delivery" by the eighth business day of the following month
  - iv. Provide monthly service level performance summary report by the tenth business day of the following month
8. Introductory Training Program; Contractor shall provide service introduction and interpreter awareness conference training sessions to client- designated representatives.
9. Account Relationship Coordinator; Contractor shall assign a designated account coordinator will be assigned to facilitate account management; support and maintain account activities, coordinate dispute review and resolutions, and administer monthly quality review and needs assessment courtesy calls with client-designated representatives.

Tim Bernal Toll-Free 888.983.5352 | Direct: 503.535.2178 E-mail: tbernal@telelanguage.com
10. Contractor must provide a professional interpreter corp qualified through a documented process of credentialing by the contractor.
11. Contractor shall demonstrate a well-established quality assurance process
12. Contractor shall provide complete confidentiality, Including HIPAA Compliance
13. Contractor shall provide complete Customer training and 24X7 Customer support
14. Contractor shall provide built in technological redundancy ensuring uninterrupted service
15. Upon request by the State, Contractor shall translate;
  - i. Spanish
  - ii. Italian, French, German, Portuguese
  - iii. Albanian, Bulgarian, Serbo-Croatian, (Bosnian, Serbian and Croatian)
  - iv. Czech, Dutch, Finnish, Greek, Hebrew, Hungarian, Polish, Russian

- v. Arabic, Burmese, Farsi, Japanese, Nepali, Chinese (Mandarin & Cantonese), Korean, Vietnamese, Turkish & Other Asian languages
- vi. African languages (Akan, Amharic, Maay Maay, Tigrinya, Swahili, Somali, Twi, Af-Maxaa, Kirundi, etc)
- vii. Hmong, Tagalog,
- viii. Languages not shown above may be requested and the contractor is expected to provide qualified Translators as available. In emergency situations, the contractor shall agree to make a good faith effort to provide languages and will notify the requesting party of the availability and turnaround time

16. Contractor shall for Translation services provide;
- i. Have the ability to translate health and medical technical terms.
  - ii. The Contractor shall provide written translations (including proof reading) within the following time frames; Up to 2000 words (two calendar days), 2000 -4000 words (four calendar days), Over 4000 words (up to five calendar days)
  - iii. in case of emergency, contractor will do utmost to translate emergency documents in the shortest possible timeframe for such events as natural disasters or health emergencies
  - iv. Translations completed within 72 hours for standard priority and within 24 hours for rush service.

17. Upon request by the State, Contractor shall Interpret;
- i. Essential languages are Arabic, Bosnian, Burmese, Chinese (Mandarin, Cantonese) French, Kirundi, Karen, Maay Maay, Nepali, Russian, Somali, Af-Maxaa, Spanish, Swahili, and Vietnamese.
  - ii. Languages not shown above may be requested and the contractor is expected to provide qualified interpreter as available. In emergency situations, the contractor shall agree to make a good faith effort to provide languages and will notify the requesting party of the availability and turnaround time.

18. Contractor shall for Interpretation services provide;
- i. Average connect time less than 30 seconds.
  - ii. The same flat per-minute rate for all languages other than spanish, with charges rounded to the nearest second.
  - iii. Toll-free number.
  - iv. Provide over-the-phone interpreting of language-assisted calls 24 hours a day, 7 days a week, 365 days a year 888-983-5352.

19. Contractor shall submit quarterly reports electronically detailing the purchasing of all items under this Contract. Contractor's reporting shall state "no activity" for any month in which there is no activity during a quarterly reporting period.

- a. The reports shall be an excel spreadsheet transmitted electronically to [SOV.ThePathForward@vermont.gov](mailto:SOV.ThePathForward@vermont.gov).
- b. Reports are due for each quarter as follows:

<b>Reporting Period</b>	<b>Report Due</b>
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

- c. Failure to meet these reporting requirements may result in suspension or termination of this Participating Addendum.

## ATTACHMENT B – PAYMENT PROVISIONS

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

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

Category	Cost	Minimum
Written translation Spanish	\$0.19/word	250 Words
Written translation for Russian, Mandarin, German, French and Vietnamese	\$0.25/word	250 Words
Written translation for All Other Languages	\$0.30/word	250 Words
Rush Service	%20	None
Desktop Publishing Translation	\$40.00 Per Hour	None
Telephone Interpretation Spanish	\$0.55 Per min	None
Telephone Interpretation Other Languages	\$0.76 Per Min	None
Video Interpretation Spanish	\$0.95 Per min	None
Video Interpretation Other Languages	\$1.30 Per min	None
Video Interpretation ASL	\$2.49 Per min	None



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

**“Attachment C: Standard State Provisions for Contracts and Grants” (revision version dated December 15, 2017) 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/purchasing-contracting/forms>.**

## ATTACHMENT E BUSINESS ASSOCIATE agreement

**THIS BUSINESS ASSOCIATE AGREEMENT (“AGREEMENT”) IS ENTERED INTO BY AND BETWEEN THE STATE OF VERMONT AGENCY OF HUMAN SERVICES, (“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](mailto: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*.

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



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

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

Rev. 05/22/2020

## Attachment F

### AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT/GRANT PROVISIONS

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

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

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

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

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

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

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

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

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

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

5. **Non-Discrimination:**

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

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

Party further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent

Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. **Employees and Independent Contractors:**

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

7. **Data Protection and Privacy:**

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

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

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

**Other Confidential Consumer Information:** Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

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

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

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

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

9. **Information Technology Systems:**

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

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

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

State, not the Party (or subcontractor or sub-grantee), shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

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

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

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

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

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

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

10. **Other Provisions:**

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

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose

sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

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