

1. **Parties.** This is a Contract for services between State of Vermont, Department of Disabilities, Aging and Independent Living (hereinafter called "State"), and ARIS Solutions, Inc., with a principal place of business in White River Junction, VT 05001 (hereinafter called "Contractor"). Contractor's form of business organization is a 501(c)(3) not-for-profit organization. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this Contract is services generally on the subject of providing Fiscal/Employer Agent (F/EA) services for participant and surrogate directed services for the State of Vermont. Detailed services to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$7,500,000.00
4. **Contract Term.** The period of Contractor's performance shall begin on February 1, 2018, and end on January 31, 2020, with an option to renew for up to two additional one-year periods, for a total maximum of four years.
5. **Source of Funds.** The Program Code for this Contract is:
Program Description: Medicaid, General Fund, Social Services Block Grant
Program Code: 37710, 43500, and 37800
6. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.
7. **Contact Persons for this Contract.**

<u>State Primary Contact Person:</u> Lisa Edson Neveu Quality Outcomes Specialist E-mail: Lisa.Neveu@vermont.gov Telephone: 802.241.0296	<u>Contractor Primary Contact Persons:</u> William Ashe, Ed.D/Co-Executive Director E-mail: billa@uvs-vt.org Cheryl Thrall, M.A./ Co-Executive Director E-mail: cthral@lincolnstreetinc.org Telephone: 802.280.1911
--	---
8. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
9. **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.
10. **Attachments.** This Contract consists of 56 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 (12/15/17)

Attachment D - Other Provisions & Information Technology System Implementation Terms

and Conditions (04/27/17)

Attachment E - Business Associate Agreement (07/07/17)

Attachment F - AHS Customary Contract Provisions (12/31/16)

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

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

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

By the State of Vermont:

Signature: e-Signed by Monica Hutt
on 2018-01-31 16:53:01 GMT

Name: Monica Caserta Hutt
Title: Commissioner
Department of Disabilities, Aging, and
Independent Living

By the Contractor:

Signature: e-Signed by William Ashe
on 2018-01-31 16:34:08 GMT

Name: William Ashe, Ed.D
Title: Co-Executive Director

Signature: e-Signed by Cheryl Thrall
on 2018-01-31 16:31:52 GMT

Name: Cheryl Thrall, M.A.
Title: Co-Executive Director

Contractor's Address:

ARIS Solutions, Inc.
PO Box 4409
White River Junction, Vermont 05001

**ATTACHMENT A - STATEMENT OF WORK
SPECIFICATIONS OF WORK TO BE PERFORMED**

The Contractor shall act in the capacity as an F/EA (also called a Fiscal Intermediary Service Organization [FISO] or Financial Management Service [FMS]) for participant- and surrogate- directed services. The Contractor shall provide a secure payroll service for individuals authorized by the State to receive services from Developmental Disabilities Services (including Integrating Family Services-Respite/Family Managed Respite), Children's Personal Care Services (including Children's Creative Connection), the Attendant Services Program, the Traumatic Brain Injury Program, or the Choices for Care Program (including the Flexible Choices option, Adult Family Care-Respite and the Moderate Needs Group). In addition, the Contractor shall serve as the billing agent for family directed nurse-providers in the Medicaid Self/Family Directed Hi-Technology Nursing program. The Contractor shall make miscellaneous payments for goods and services, pay all employment-related taxes for participating employers and employees, and make direct cash payments to participants as defined by the State.

1) PAYROLL SERVICE

A. Qualifying as the Fiscal Agent: The Contractor shall meet all applicable state and federal requirements for payroll agents and fiscal intermediaries.

B. Working with Employers and Employees: The Contractor shall assist employers to learn and to carry out their responsibilities as employers. The Contractor shall provide technical support and assistance, by phone, by email, and through the Contractor's secure website, as related to payroll functions for participants, employers, and employees of these programs. Such assistance and support shall include assistance with administration of required documentation, including the completion of the enrollment and payroll documents necessary for each employee, paperwork, program understanding, and other related services needed. The Contractor shall:

1. Have procedures in place that accommodate employers who are not employment professionals. When providing support to employers under this agreement, the Contractor's instructions shall comply with the Americans with Disabilities Act and shall be clearly detailed such that the employer is able to carry out their responsibilities.
2. Communicate effectively and in a timely manner with relevant parties including participants, employers, and employees who have a wide variety of disabilities and individuals with limited English proficiency.
3. Be culturally sensitive and emphasize the philosophy of self-direction in all business practices.
4. Provide prompt and accessible assistance to employers through a toll-free phone line for people at any Vermont exchange during State of Vermont business days, Monday through Friday between 8:00 am and 4:00 pm, and by secure 24-hour FAX and secure internet access.

C. Enrollment: The Contractor shall:

1. Enroll employers and employees in the payroll system associated with these programs.
2. Request and document the person's communication language of choice.
3. Produce and distribute program-specific enrollment packets, all required forms and instructions, and the employer handbooks to all potential employers as agreed upon by the State and the Contractor.
 - a. The State shall approve any changes to the Contractor's enrollment packets prior to the Contractor distributing them.
4. Distribute enrollment packets to participants, families, surrogates, developmental home providers, potential employees, designated agencies, specialized service agencies, certified

providers (e.g. case managers, Flexible Choices consultants), Children's Creative Connections support brokers and any other entity identified by the State.

5. Have the ability to distribute enrollment materials in an accessible format by the US mail, e-mail, and as a download from its website as appropriate.
6. The Contractor agrees to assist the State to update the employer handbook or other enrollment packet materials and to work with the State to ensure the accuracy of information contained therein. The Contractor agrees to distribute this handbook as part of the enrollment packet.

D. Authorization: Prior to the Contractor initiating services to participants and their associated employers, written authorization for services, including limits, is required from the State or an agency designated by the State to be a Designated Agency, Specialized Service Agency or Supportive Intermediary Service Organization (DA/SSA/SISO). At least annually thereafter, the State or DA/SSA/SISO shall notify the Contractor of the program-specific authorized limits for services. Authorized limits shall be established for each program and in the form determined by the State.

1. Service authorization for the programs are as follows:
 - a. Attendant Services Program (ASP): Budgets are authorized on an annual basis, based on the participant's assessed needs. The participant's budget reflects the service allocation in dollars for all program options. The service authorization in dollars is a two-week budget with no carry over of any remaining budget from pay period to pay period.
 - b. Children's Personal Care Services (CPCS): Budgets are authorized every six months. Six-month Prior Authorizations are allocated in dollars, typically authorized in consecutive six-month segments for an annualized allocation.. CPCS includes a limit number (<100) of Children's Creative Connections Program participants who access payments for goods and services, which are prior approved by the State in individual "spending plans."
 - c. Choices for Care (CFC):
 - i. Participant & Surrogate Directed Services including:
 - (1) Personal Care: Budgets are authorized on an annual basis, based on the participant's assessed needs. The participant's budget reflects the service allocation in dollars for this program option. The service authorization in dollars is a two-week budget with no carryover of any remaining budget allocation from one two-week period to another.
 - (2) Companion and Respite: Budgets are authorized on an annual calendar year (January 1 to December 31) basis, based on the participant's assessed needs. The participant's budget reflects the service allocation in dollars for this program option. The service authorization in dollars is a budget with carryover of remaining funds each pay period; however, there is no carryover of remaining funds from one calendar year to the next.
 - ii. Flexible Choices (FC): Budgets are authorized on an annual basis, with two-week service allocations in dollars, based on the participant's assessed needs. The participant works with an Intermediary Organization to detail how the expenditure of the service allocation/budget will be used. This option includes "savings". If a participant does not spend the entire budget in a two-week period, the unspent sum may be carried over as savings. Participants may not carry over more than \$500 in savings from one fiscal year (July 1 to June 30) to the next.
 - d. Developmental Disabilities Services (DDS): Budgets are authorized on an annual basis, based on the participant's assessed needs. The participant's budget reflects an Annual Authorized Spending Limit in dollars, for each funded area of support, which are

inclusive of employer payroll taxes. The amount submitted on an employee's timesheet must not exceed the remaining amount of funds in the Annual Authorized Spending Limits, for the funded area of support, unless there is another funded area for that individual, in which case only the single timesheet that exceeds the budget may be paid by using funds from the second funded area. In no case can the total Annual Authorized Spending Limit be exceeded. These budgets shall be maintained by the Contractor in the secure database.

- e. Traumatic Brain Injury (TBI) and CFC Adult Family Care Respite: Authorized funding as identified in the individual's Plan of Care which includes Plan of Care start and end dates for the individual services.
2. For program participants, the number of hours submitted for reimbursement in one calendar day cannot exceed 24 hours between multiple providers/employees, except in DDS as authorized by the Individualized Support Agreement.
3. For employees, the number of hours submitted for reimbursement in one calendar day cannot exceed 24 hours between multiple participants/employers, except in DDS.
4. For employees, the minimum wage shall not be less than the amount set forth in the American Federation of State, County and Municipal Employees (AFSCME) Collective Bargaining Agreement (CBA) with the exception of TBI, which shall not be less than the Vermont minimum wage.
5. The State agrees to provide the Contractor with complete information regarding authorized services as set forth below. The State may provide this information either in writing, including, but not limited to, via secure email, or by providing Contractor with access to the State's case management tool of record.
 - a. ASP: Names, Social Security numbers, dates of birth, ICD codes, as applicable, hiring dates by employer, volume of service authorized, service authorization start dates and end dates, and funding source.
 - b. CFC and CFC/FC: Names, Social Security numbers, dates of birth, ICD Codes, Employer/Surrogate names, Plans of Care service data (including type and volume of services, start date and end date), and Patient Share information (including amount of Patient Share liability and effective date).
 - c. CPCS: Names, Medicaid unique identifier, Social Security numbers, dates of birth, ICD codes, names and addresses of Employers, and Notice of Decision service data (including volume of services, start dates, and end dates).
 - d. DDS and Family Managed Respite (IFS-R): Authorized participant budgets from the DA/SSA/SISO. Names, addresses, dates of birth, Medicaid unique identifiers, Social Security numbers, DSM-5 diagnosis, ICD-10 Code, Employer names, start date, end date, total allocation, effective date of enrollment/change.
6. The State agrees to provide the Contractor correct and updated information for eligible individuals and changes in authorized services such as terminations, changes in Plans of Care, etc., via a secure electronic transmission prior to the program payroll deadlines as identified by the Contractor. For DDS, updated information on all changes to authorized services shall be provided by DA/SSA/SISO.
7. All CFC and ASP service plans and budget authorizations must be entered into SAMS and received by the Contractor via fax or secure email by 12:00 p.m. on the Thursday prior to the payroll week, and all CPCS/DDS/IFS-R/TBI/Moderate Needs/AFC Respite must be received by the Contractor via fax or secure email by 4:00 p.m. on the Monday of the payroll week, in order to guarantee payment to employees in that payroll period. When possible, the State shall work to ensure that Plans of Care begin according to the Contractor's payroll dates.
8. Hourly rates may vary and are determined by the employer within the limits established by

state and federal law, State policy and the CBA according to program standards. Within 48 hours of becoming aware of any impending rate changes, the State shall, by written notice, notify the Contractor of any changes to the authorized rates of pay for employees and programs whose hourly rates are determined by the State, when rates are authorized to automatically rise, when alternative shift rates are established, or when billing rates change as a result of changes to FICA, Workers' Compensation, Unemployment Insurance or any other non-wage costs. The Contractor shall acknowledge the receipt of notification of State established rate changes in writing within two (2) working days. The Contractor shall provide confirmation to the State that the billing rate used by the Contractor is identical to the billing rate identified in State documentation. Additionally, it is the responsibility of the Contractor, in partnership with State program staff, to provide notification of the billing rate change to employers, employees, and beneficiaries within two payroll cycles of the Contractor receiving notification from the State and prior to implementation.

E. Patient Share: The Contractor shall manage the Patient Share by:

1. Billing employers any Patient Share payments as determined by the State Department of Vermont Health Access (DVHA).
2. Tracking the amount of Patient Share withheld by Medicaid.
3. Managing and tracking Patient Share notices from the DVHA.
4. Where necessary, interacting with other service providers for the individual participant, to ensure the "highest paid provider" determination accurately reflects the collection, withholding, and payment of Patient Share.

F. Payroll Reports: At the completion of each payroll, the Contractor shall provide to employers, and, in DDS, to the DA/SSA/SISO, a statement showing the funds paid, the balance remaining in the authorized funding limits, the dates of service, the number of hours worked and the appropriate service code for each date of service. The purpose of the statement is for the participating employer, and the DA supporting the participant (if any), to know whether payments are consistent with the authorized funding limits and to know whether the payment made to the employee coincides with the timesheet submitted. The format of these reports may vary from program to program and will be designed to meet the needs of the participants, employers and DA/SSA/SISOs in those programs. The Contractor shall provide this information to the State if requested. The formats for these reports will be approved by the State. Reports to agencies must be in a format that includes the functionality for agencies to search and to sort the data. While these reports will be available via secure electronic format (e.g. secure e-mail or secure website), reports will continue to be available on paper distributed through the US Mail when requested by the employer and/or an agency. The Contractor shall:

1. Not process requests for payment or payroll that exceeds the authorized funding limits for the participant, unless authorized in writing by the State or the DA/SSA/SISO and the participant's Medicaid eligibility for the relevant time frame has been confirmed.
2. Maintain an Employer Identification Number (EIN) for each individual employer for the purposes of tax reporting.
3. Complete the appropriate federal forms for filing to certify that it qualifies to serve as a fiscal agent for each employer under required IRS procedures. The Contractor shall prepare for filing all appropriate state forms to be recognized by state unemployment and income tax agencies as a fiscal agent for the employer. The Contractor shall not submit said paperwork to the IRS or other agencies until directed to do so by the State.
4. Ensure the employer's share of all taxes due, including state and federal income tax, FICA, and unemployment compensation taxes are withheld, filed, and paid on time and in full for each employee. The Contractor shall also process all judgments, garnishments, tax levies or

related holds on an employee's wages required by local, state, or federal law. The Contractor shall not be responsible for reporting or payment of any state or federal taxes for any payroll activity not rendered by the Contractor.

G. Background Checks: The Contractor shall perform background checks on all employees in accordance with the current Department of Disability, Aging & Independent Living (DAIL) Background Check Policy.

1. The Contractor shall ensure employees are checked against the exclusionary lists as required by the state and the federal governments.
 - a. For employees newly hired by an employer, the Contractor shall check the employee against the Department of Human Services Office of Inspector General's Exclusionary list.
 - b. Upon learning that an employee is ineligible for payment as a result of an exclusionary finding on any background check, the Contractor shall inform the employer of the findings. Services cannot be provided until background checks are complete and the employee has met all background check requirements.
 - c. The Contractor shall not process payroll for services provided for any employee who has not successfully met all required background checks or has not been granted a "variance" to work by the State.
 - d. Upon being informed of the presence of an employee on any exclusionary list, the Contractor shall confirm that the name on the list is, in fact, the employee receiving payment via their services. Contractor shall inform the employer of the findings and cease payment as of the date of the Contractor's learning of the finding.
2. In the case of DDS and IFS-R and the Ombudsman Program, the Contractor shall send verification to the appropriate DA/SSA/SISO that a background check has been performed on all workers paid through the Contractor. A background check, in accordance with DAIL Background Check policy, shall be performed, when requested by an employer, on individuals who are hired by employers managing DDS supports but who may not use the Contractor for payroll functions.

H. Accepting Timesheets: The Contractor shall design and securely accept timesheets through a variety of media and the US Mail. The Contractor shall encourage electronic submission but shall provide paper timesheets and self-addressed stamped envelopes when requested by the employer.

1. Timesheets shall contain the following information:
 - a. Name of employee and employee identification number;
 - b. Name of individual approved for, and receiving the services;
 - c. Name of employer (if different from the participant);
 - d. Rate of pay;
 - e. Pay period;
 - f. The start and end time of hours worked by day/date;
 - g. Employee's signature, and date of signature;
 - h. Employer's signature, and date of signature;
 - i. Type of service or program service categories; and
 - j. Information regarding hospitalization and/or nursing home admission, if applicable.
2. The Timesheet shall be in plain language at a 6th grade reading level, and shall be approved by the State prior to use by the Contractor. The Contractor shall provide timesheets in alternative formats such as large print and in the preferred language of the employer.
3. For employers using secure e-mail or secure internet to submit timesheets, the Contractor

- shall provide paper timesheets and envelopes only if requested by the employer.
4. For employers submitting timesheets via FAX, the Contractor shall provide timesheets but need not provide pre-addressed and pre-stamped envelopes.
 5. For employers and employees using paper timesheets, the Contractor shall print and distribute timesheet forms and pre-addressed, pre-stamped envelopes for submission of timesheets when requested by the employer. The Contractor shall have a method by which employers and employees that have selected to receive paper copies of timesheets can receive timesheets and pre-addressed, pre-stamped envelopes on an ongoing basis.
 6. Timesheets in any format shall be securely retained in compliance with Medicaid requirements established by the Center for Medicaid and Medicare Services (CMS) and as determined by the State.
- I. **Processing Timesheets:** To complete the payroll for employers and their employees, the Contractor shall:
1. Have a process to review timesheets and non-payroll payment requests to ensure they are completed correctly.
 2. Review the number of hours and the types of services documented on the timesheets and the non-payroll payment requests to ensure:
 - a. The participant is eligible for dates and services or payments represented;
 - b. The amount to be paid does not exceed the authorized funding limits established by the State and the DA/SSA/SISO or other contracted provider (i.e. subcontractor of the DA/SSA/SISO).
 - c. The Contractor shall have a process to identify, and shall review with the State, basic errors and/or potential fraud, such as:
 - i. Employees who have billed duplicate hours for multiple employers or programs;
 - ii. Hours submitted which exceed 24 for one day;
 - iii. Employers billing overlapping hours for multiple employees.
 - iv. Employees with an hourly rate of pay in excess of a specified amount identified by the State.
 3. Within 24 hours of discovery, the Contractor shall contact the responsible employer (or DA) by telephone or e-mail regarding concerns related to paperwork, timesheets, invoices and payroll process. If the Contractor is unable to reach the employer by phone or email, the Contractor shall mail a copy of the timesheet or non-payroll payment request to the employer with a notification of the action required.
 4. The Contractor shall identify and track employers who demonstrate frequent or ongoing problems in the completion of payroll paperwork, non-payroll payment requests, or non-compliance with the required payroll process and shall have a process to provide additional technical support and assistance to the employer including contacting the participant's case manager, consultant, or service coordinator (if applicable).
- J. **Payment to Employees:** Upon receipt of a properly completed timesheet, The Contractor shall pay employees via direct deposit but must have the capacity to pay via check or alternative method for employees who request it. In addition, the Contractor shall:
1. Display the Contractor's address as the return address on the envelopes used to mail the payroll checks. The check stub (or in the case of direct deposit, advice) shall display the following information:
 - a. Employee's name;
 - b. Pay Period;
 - c. Pay Date;
 - d. Hours paid;

- e. Hourly rate;
 - f. Gross wages;
 - g. Deductions;
 - h. Net wages;
 - i. Year-to-date information on wages and deductions; and
 - j. Employer's name.
2. Have a process to answer questions and to provide information regarding payroll matters to employees, employers, and participants.
 3. Upon the receipt of a properly completed timesheet, process payroll in a manner to ensure payment to employees every two weeks and as approved by the State.
 4. Have a process to allow for the payment of a timesheet, outside the standard cycle, when the Contractor has failed to pay the employee during the standard schedule due to Contractor error, Contractor system problems, or due to State or DA/SSA/SISO error.
 5. Have a process to replace checks not received by the employee.
 6. Have a system to ensure that checks which remain un-cashed for a period of 180 days or more shall not be negotiable. The Contractor shall follow its procedure to report un-cashed stale-dated checks to the State Treasurer as Abandoned Property, in compliance with statutory requirements and procedures established by the State Treasurer. Contractor shall concurrently forward a copy of the information filed with the State Treasurer to the State Fiscal Contact.
 7. Have a process to regularly de-activate inactive participants, employers, and employees from the payroll system.
 8. Make payments for goods, services, and in cash when requested by an employer and as allowed under State policies and procedures and program guidelines.
 9. Have a process to address employee wage changes when identified by the employer or by the State.
 10. Follow the terms of the CBA between the State of Vermont and AFSCME.
 11. Comply with the U.S. Department of Labor (DOL) "Home Care" Rule. This includes, but is not limited to, having a process to ensure employees are paid overtime in accordance with the DOL rules and State program standards. <https://www.dol.gov/whd/homecare/agencies.htm>
 12. Have a process to ensure employee sick leave accrual and use is tracked and implemented in accordance with the Vermont Earned Sick Time Rules issued by the Commissioner of Labor and as directed by the State. <http://labor.vermont.gov/wordpress/wp-content/uploads/Earned-Sick-Time-Rules.pdf>
- K. Withholding and Judgments:** The Internal Revenue Service (IRS) guidance shall be used to determine if an individual is an "employee" or an "independent contractor".
1. The Contractor shall ensure the employer's share of all taxes due, including state and federal income tax, FICA, and unemployment compensation taxes are withheld, filed, and paid on time and in full for each participating employee, and shall make advance payments of federal Earned Income Credit to eligible employees. The Contractor shall not be responsible for reporting or payment of any state or federal taxes for any payroll activity not rendered by the Contractor.
- L. Garnishments:** The Contractor shall ensure that all judgments, garnishments, tax levy, and any other related holds on an employee's wage, as required by local, state or federal laws, and/or State policy and procedure, are properly processed in accordance with those laws, policies and procedures.

M. Tax-Related Services: The Contractor shall provide the following tax-related services:

1. Preparation and mailing of W-2 forms and annual tax reports as required by the IRS and the State of Vermont, including W-5 forms;
2. Completion of IRS 941 deposits;
3. Payment of employees' workers' compensation insurance policy premiums. The State carries a single workers' compensation policy for all employees managed by the Contractor; the Contractor will not be expected to manage multiple individual policies;
4. Payment of any other applicable employment-related federal and state taxes;
5. Completion of any other payroll-related reports or forms;
6. Preparation and mailing of IRS 1099 forms for independent contractors;
7. Payment of actual unemployment claim costs, as forwarded to the Contractor by the Vermont Department of Labor (VDOL). Employees served by the Contractor are treated as State employees for purposes of unemployment insurance only. Thus, the Contractor need not file multiple sets of unemployment premiums. The Contractor is expected to file unemployment forms by program;
8. Participation in the annual Worker's Compensation Audit with the current policy carrier;
9. Refund to employees and to the State any FICA payments withheld for those employees for whom FICA withholding is not required.

N. Workers' Compensation Coverage

1. The Contractor shall follow the procedures established by the State to ensure coverage of eligible individuals under the group Workers' Compensation Insurance policy secured by the State. The State shall inform the Contractor of the groups of individuals who are not eligible for this coverage. The Contractor shall not be responsible for reporting work-related injuries to the insurance agent secured by the State; the State agent shall be the direct point of contact for reporting work related injuries. The Contractor shall provide employment information in its possession (e.g. dates of employment, wages, and payroll information) required to process claims for Workers' Compensation to the State or its agents upon request. The Contractor shall refer all employers and employees to the agent secured by the State for assistance with the First Report of Injury form and for other information regarding Workers' Compensation Insurance coverage.
2. Cost of Coverage: For all programs except ASP's, including Participant Directed Attendant Care (PDAC) and Personal Services (PS), the State shall provide for the cost of the Workers' Compensation coverage on a "pass-through" basis. The method of funding the pass-through shall be as follows:
 - a. The Contractor shall establish and maintain on an ongoing basis an accounting of all costs and revenues associated with each of the programs covered by the Contractor.
 - b. The State shall establish a reimbursement rate by program, based on estimated costs, as a percentage of the employees' wages for services billed directly to the Medicaid processing reimbursement agent. These funds shall be used by the Contractor to pay the costs of Workers' Compensation Insurance premiums. The State shall adjust the reimbursement rate, as needed, to ensure the Contractor's direct costs associated with paying these premiums are met, as evidenced by information supplied to the State by the Contractor.
 - c. Workers' Compensation premium bills related to the PDAC and PS services are sent directly to the State and are not the responsibility of the Contractor.
3. The funds provided to the Contractor for the purposes of payment of the Workers' Compensation Insurance premiums are the property of the State and are held in trust by the Contractor for the exclusive benefit of the State, as associated with this Contract. The funds, including reimbursements received from the Medicaid processing reimbursement agent

(and/or other processors), shall be kept in a separate bank account and shall not be co-mingled with any funds belonging to or administered for other parties by the Contractor or on which the Contractor or other parties may have any claim of right, title or interest. Though the Contractor shall hold legal title to the account into which the funds are placed, all documents related to opening the account or otherwise referring to the account shall make clear that the Contractor is merely holding the funds as a trustee for the exclusive benefit of the State.

O. Unemployment Compensation

1. The Contractor recognizes the State is a self-insured entity for purposes of unemployment coverage for employees employed by participants utilizing the services of the Contractor.
2. The Contractor shall establish a separate account with VDOL for each of the employee groups represented by the respective programs.
3. The Contractor shall act on behalf of the employer, as the employer's representative with VDOL when claims are filed, and shall cooperate with VDOL in accordance with State procedures. The Contractor shall assist employers with VDOL's investigations and inquiries related to termination of employees and other State Unemployment Tax Authority (SUTA)-related activities.
4. Cost of Coverage: For all programs except ASP's, PDAC, and PS services, the State shall provide for the cost of the unemployment coverage on a "pass-through" basis. The method of funding the pass-through shall be as follows:
 - a. The Contractor shall establish and maintain on an ongoing basis an accounting of all costs and revenues associated with each of the programs covered by the Contractor.
 - b. The State shall establish a reimbursement rate based on estimated costs, as a percentage of the employees' wages, for services billed directly to Medicaid fiscal agent. These funds shall be used by the Contractor to pay the costs of unemployment claim invoices submitted to the Contractor by VDOL.
 - c. In the case of ASP's, PDAC, and PS programs, VDOL shall submit SUTA bills to the Contractor. The Contractor shall verify these costs against SUTA reports received by the Contractor during the period. The Contractor shall then submit these bills to the State for payment. Payment is not the responsibility of the Contractor.
 - d. The Contractor shall file quarterly electronic wage statements with VDOL. The Contractor shall maintain separate SUTA accounts for each program.
 - e. The State shall adjust the reimbursement rates, as needed, to ensure that the Contractor's direct costs associated with paying claims are met, as evidenced by information supplied to the State by the Contractor.
 - f. Upon termination of this Agreement, any funds not spent for these direct costs shall revert to the State, or be transferred as directed by the State to another entity identified by the State, to be used for such coverage.
5. The funds provided to the Contractor for the purposes of Unemployment Compensation are the property of the State and are held in trust by the Contractor for the exclusive benefit of the State as associated with this Contract. The funds, including reimbursements received from the Medicaid fiscal agent, shall be kept in a separate bank account and shall not be co-mingled with any funds belonging to or administered for other parties by the Contractor or on which the Contractor or other parties may have any claim of right, title or interest. Though the Contractor shall hold legal title to the account into which the funds are placed, all documents related to opening the account or otherwise referring to the account shall make clear that the Contractor is holding the funds as a trustee for the exclusive benefit of the State.

- P. **Providing Information:** In the capacity of an F/EA, the Contractor shall communicate effectively, and in timeframes determined and agreed upon by State and Contractor, with relevant parties including participants, employers, and employees who have a wide variety of disabilities, cultural differences, and individuals with limited English proficiency. Written materials shall be provided in plain language at a 6th grade reading level and available in alternative formats (e.g. large print, compatible with telecommunication devices for the hearing and speech impaired, languages other than English). In addition, the Contractor shall:
1. Develop, implement, and maintain orientation and skills training for employers, in a variety of mediums (e.g. on line, in writing, in-person, etc.), to assist them with learning and carrying out their responsibilities as employers. The training shall be reviewed at least annually, and/or as requested by the State, and updated as needed.
 2. Respond to questions and requests for information from employers, employees, participants, case managers, DA/SSA/SISOs, and the State within two working days or as agreed upon by both parties.
 3. Upon request, provide translation and interpreter services (e.g. American Sign Language and services for persons with Limited English Proficiency).
 4. Ensure information periodically provided by the State is sent to employers and employees by inserting stuffers in pay or report envelopes, posting notices on the Contractor's website and by other electronic means of notification.

2) COLLECTIVE BARGAINING AGREEMENT

Please note, "Employees," as defined in this contract, are referred to as "Providers" in the CBA.

The Contractor shall follow the terms of the CBA between AFSCME (hereafter called the "Union") and the State. This includes but is not limited to the following:

- A. The Contractor shall maintain a working relationship with the Union and designate at least one (1) point of contact for the Union in the Contractor's office.
- B. The Contractor shall provide timely payment for employees who submit correct, complete and timely payment forms for delivered services in compliance with program requirements for covered services.
- C. The Contractor shall pay no less than the minimum hourly and daily rates set forth by the CBA between the State and the Union.
- D. In the event a timesheet reflects an hourly or daily rate of less than the rates set forth by the CBA, the Contractor shall adjust those rates to the CBA minimums. The Contractor may do so without the need to obtain employer authorization. In the event the Contractor identifies an employer has submitted multiple timesheets for a single employer which indicate a rate of pay less than the rates set forth by the CBA, the Contractor will contact the employee to provide technical assistance.
- E. Within one (1) full pay period of receiving written notification from the Union that an employee has joined the Union and has authorized the deduction and withholding of Union Dues from his or her wages, the Contractor shall deduct and withhold Union Dues in the amount set forth by the Union.

- F. Union Dues cannot be withheld for any employee that is not eligible for, or otherwise does not receive, any payments during a pay period.
- G. The Contractor shall cease deducting and withholding Union Dues from an employee upon receipt of thirty (30) calendar days' advance written notice by the employee that he/she is no longer a dues paying member of the Union.
- H. Upon written request from an employee, the Contractor shall deduct from the employee's total amount the amount specified by the employee as a voluntary contribution to the Union PEOPLE's fund. Withholdings for PEOPLE's fund will be by percentage of gross wages as approved by the employee. Should the Contractor develop the capability to withhold for the PEOPLE's fund by means of both percentage and flat dollar amounts, this practice will be implemented.
- I. Within five (5) business days after the end of each pay period, the Contractor shall remit to the Union, via direct deposit, all Union related deductions and provide to the Union a secure electronic report which includes: the pay period, the employee's name, address, unique identifying number, wages paid, and hours worked in the pay period, and the amount of the membership dues deducted for each employee.
 - 1. Reports provided to the Union by the Contractor shall only contain employee information if the employee is a Union member from whom dues are deducted.
 - 2. The Contractor shall submit the report to the State for approval. Upon approval by the State the Contractor shall securely send the electronic report to the Union and copy the State on the electronic transmission.
- J. The Contractor shall include Union membership applications, provided by the Union, in orientation materials distributed to employees.
- K. Upon request from the Union, the Contractor will provide the State the names and addresses of all employees, regardless of Union affiliation. The State will then provide the information, subject to disclosure, directly to the Union.
- L. The Contractor shall direct those employees with questions and requests for information regarding Union membership and Union dues to: Vermont Homecare United-AFSCME, 734 US Route 4E, Box #8, Rutland, Vermont 05701: (802) 775-9577

3) **OUT OF STATE PARTICIPANTS**

The Contractor shall establish a procedure to ensure that participants who live out of state will continue to receive services under this Contract when written approval is provided to the Contractor by the State.

4) **NON-PAYROLL GOODS AND SERVICES**

A. The Contractor shall make payments for cash, non-payroll goods and services when requested by an employer and as allowed under State policies and procedures. Payment amounts are not to exceed the authorized funding limits as determined by the relevant program for goods and services.

5) BILLING AGENT FOR FAMILY DIRECTED HI-TECH NURSES

- A. The Contractor shall serve as the billing agent for family directed nurse-providers in the Medicaid Self/Family Directed Hi-Tech Nursing program. This Contractor's responsibilities as the billing agent include:
1. Receiving timesheets from the nurse-provider;
 2. Confirming timesheets meet minimum acceptable criteria established by the State;
 3. Converting timesheets to a format accepted by the Vermont Medicaid fiscal agent (DXC at the initiation of this contract).
 4. Submitting claims to the Vermont Medicaid billing contractor (DXC at the initiation of this contract);
 5. Monitoring the processing of a claim and informing the nurse-provider if there is a problem with payment of a claim.
- B. The Contractor will not produce checks based on these claims.
- C. The nurse-providers are functioning as independent contractors. The Contractor, serving as the billing agent, is not the employer of the nurse-providers.
- D. It is the responsibility of DVHA to ensure the nurse-providers have met all the requirements to be Vermont Medicaid providers.
- E. The Contractor is held harmless for bills they do not process due to errors on the part of the nurse-provider or the State.

6) CLAIMS REIMBURSEMENT

- A. The Contractor agrees to maintain its status as a Medicaid provider to process claims. The Contractor shall verify and ensure Medicaid eligibility before submitting Medicaid claims for any participant, using the procedure agreed upon by the Contractor and the State. Claims for reimbursement must be timely and current. The State agrees the Contractor shall be reimbursed for the payment of the first instance of a participant-specific Medicaid claim submitted timely but denied under circumstances wherein the Contractor had no reasonable expectation to know the participant or service was ineligible for reimbursement (e.g. previous respite care paid claims by another entity; inaccurate information provided by the State). This applies when efforts by the Contractor to resolve the denial have failed.
- B. The State will only reimburse the Contractor for the first event for an individual described in 6)A. above. The Contractor agrees to track any claims denied under the circumstances described in "A" above, when the Contractor has followed the agreed upon procedure to ensure participants are eligible for Medicaid.
- C. In the case of DDS, invoices shall be submitted by the Contractor to the DA/SSA/SISO that authorized the participant to receive the services. The State, in consultation with the Contractor and DA/SSA/SISOs, has established the billing and information required for the direct service data reporting format. This format may change at the discretion of the State during the duration of this agreement. The Contractor shall bill the DA/SSA/SISO for all wages, taxes, Workers' Compensation insurance premiums, background checks, and any non-payroll goods and services. Workers' Compensation and Unemployment Compensation shall be managed in accordance with

Attachment A, Section 1)N. and 1)O. of this Agreement. For Family-managed Respite, the Contractor shall bill the Medicaid reimbursement processing agent as instructed by the State using the agreed upon methodology.

- D. The Contractor shall bill the Medicaid reimbursement processing agent, within a range as determined by the State, for CPCS including Children's Creative Connections, ASP/Medicaid Participant Directed Attendant Care, and CFC, including FC and Family Managed Respite. The rate includes payments for wages, taxes, and benefits.
- E. For ASP service; PDAC and PS, the Contractor shall submit separate invoices, one for each service, at the end of the payroll period. Each invoice shall include a summary statement, by service, of the total reimbursement due the Contractor based on the total hours of reimbursable services, and including the number of participants served in the period. The format for these invoices and the payroll information associated with the costs of the payroll, shall follow the format developed by the State and the Contractor. Payment for services provided while an ASP participant is hospitalized may be made upon approval by the ASP program administrator and if State General Funds are available. Such payments may not extend beyond 30 days of hospitalization.
- F. The Contractor shall routinely work to resolve denied claims for services rendered as identified the Medicaid rules for timely filing.
- G. When the Contractor is properly entitled to payments for claims that are submitted according to timelines and procedures, but have been denied due to systems problems beyond the Contractor's control, the State shall work with the Medicaid processing reimbursement agent and the Agency of Human Services to authorize advances, if needed, while the systems problem is corrected.
- H. The Contractor agrees that when a Remittance Advice is received indicating the benefits are exhausted, the Contractor shall stop subsequent payment and billing.
- I. The State agrees to ensure that the Medicaid fiscal agent implements the Claims Reimbursement provisions of this Agreement, as well as relevant subsequent decisions made by the State in adhering to these provisions.
- J. The State agrees to ensure that the Medicaid fiscal agent identifies a designated contact person with authority to act in accordance with this Contract.

7) CASH FLOW

- A. The Contractor shall maintain cash flow sufficient to meet all payroll and non-payroll payment obligations in accordance with the established payroll schedules for each program serviced by the Contractor under the terms of this Agreement. The Contractor acknowledges that the State has provided \$900,000 to the Contractor to support cash flow associated with these payments.
- B. The funds provided to the Contractor by the State are the property of the State and are held in trust by the Contractor for the exclusive benefit of the State as associated with this Contract.
- C. The funds, including reimbursements received from Medicaid fiscal reimbursement agent, shall be kept in a separate bank account and shall not be co-mingled with any funds belonging to the

Contractor or on which the Contractor or other parties may have any claim of right, title or interest.

- D. Though the Contractor shall hold legal title to the account into which the funds are placed, all documents related to opening the account or otherwise referring to the account shall make clear that the Contractor is merely holding the funds as a trustee for the exclusive benefit of the State.

8) RELATIONSHIP TO REPRESENTATIVE PAYEE

The Contractor shall not provide representative payee services under this Contract, and any funds and accounts which the Contractor may handle as a representative payee for any participant shall be kept separate and distinct from, and shall not be co-mingled with, the funds handled pursuant to this Agreement.

9) CONTRACTOR STAFF TRAINING

The Contractor shall send a representative to training sessions as requested by the State.

10) EVALUATION

A. Every two years, on a schedule agreed upon between the Contractor and the State, the Contractor shall systematically seek input from employers and other relevant parties to assess the quality of its services using an independent entity to collect the information.

- 1. The Contractor shall work with the State in the development of the process. The process will be implemented after State approval.
- 2. The Contractor shall provide the State with the data and the results of the evaluation.
- 3. Based on the evaluation, the Contractor shall identify areas for improvement and shall provide a plan to address identified concerns.

B. Each month, in a format agreed upon between the Contractor and the State, the Contractor shall provide the State with the Contractor's:

- 1. Call center data (e.g., the number and duration of calls, number of dropped calls, and average wait time),
- 2. Enrollment data (e.g., the number of new enrollees by program and amount of time between initial contact and enrollment completion),
- 3. Data regarding the identification of basic errors and/or potential fraud (as identified in Attachment A, Section 1.I.2.c.),
- 4. Analysis and a plan to address concerns, if any, found in 1-3 above. Plans to address concerns will be reviewed with the State and, as appropriate, Contractor will consult with the State and seek approval on proposed plans.

11) REPORTS

The Contractor shall provide reports to the State, with the content, format, and manner of delivery determined by the State. Reports shall include information needed by the State to identify individuals and their services received and to manage the programs through summary and aggregate information on the number of participants, employees, hours, costs, and types of services. The Contractor and the State, including State IT, shall jointly work on formats that can be standardized among the programs and that can be securely electronically transmitted and downloaded for formatting into State databases to ensure accurate information for each participant. Reports include but are not limited to:

Frequency	Report	Securely Delivered to
-----------	--------	-----------------------

Prior to the end of the second year of the Contract	Evaluation Date: Quality of Services Data/Satisfaction Data	1) F/EA Contract Manager
Annual	Contractor's Annual Audit	1) State Fiscal Contact 2) F/EA Contract Manager
Quarterly (July, October January, April)	Bank statements for all accounts holding designated State funds and Accounts Receivable reports for each of the programs for which services are provided, including Patient Share receivables.	1) State Fiscal Contact 2) F/EA Contract Manager
	Tax withholding and payments via copies of the quarterly Federal and State tax reports.	1) State Fiscal Contact 2) F/EA Contract Manager
	A report identifying un-cashed stale dated checks as reported to the State Treasurer.	1) State Fiscal Contact 2) F/EA Contract Manager
	Program level information including employee, employer, participant, service code, hours paid, check date, pay period, rate of pay, gross pay.	F/EA Contract Manger
Monthly	All direct payments, goods and services payments, unemployment compensation payments and allocations, and workers compensation payments and allocations associated with each program	1) State Fiscal Contact 2) F/EA Contract Manager
	Payroll Accuracy	F/EA Contract Manager
	Evaluation Data including: 1) Call Center Data 2) Enrollment Data 3) Basic Errors/Potential Fraud 4) Actions Taken (as needed)	F/EA Contract Manager
	The Contractor shall submit Union reports to the State to receive approval prior to providing the reports to the Union. The Contractor shall use a secure transmission method when providing the reports to the Union.	F/EA Contract Manager
Each Payroll	A statement showing the funds paid, the balance remaining in the authorized funding limits, the dates of service, the number of hours worked including the start and end time of the service, and the appropriate service code for each date of service.	1) Employers 2) For DDS, the DA/SSA/SISO
As Needed	Ad Hoc Reports as needed to manage program and address employer, employee and participant concerns.	State, Agency, DA/SSA/SISO, stakeholders as appropriate

12) FRAUD

The Contractor shall report any suspected abuse and fraud in accordance with requirements set forth by the Medicaid provider agreements and as otherwise provided by Vermont and Federal law. The Contractor shall also report any suspected abuse or fraud to the Medicaid Fraud Unit of the Attorney General's Office immediately, as well as to the State, including Adult Protective Services, when appropriate, and follow all other procedures as agreed upon between the State and the Contractor.

13) RECORDS MAINTENANCE

The Contractor shall maintain all timesheets, billing records, background check records, and payroll records. All documents and records must be made available to the State and any of its agents, including state auditors, for review and auditing, upon request. All records will be maintained in a secure manner and as required by law and as directed by the State.

14) PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT

The Contractor shall be required to notify the VDOL of any newly hired persons, in accordance with the requirements set forth by the State and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

15) UPDATES AND MODIFICATION OF PROCEDURES

Where this Contract states that procedures may or shall be developed or updated and approved by both parties, that approval shall be documented by the designated representatives of both the Contractor and the State. This documentation may take the form of e-mails or paper signatures from each party denoting approval.

16) PERFORMANCE MEASURES

- A. Contractor shall demonstrate that it produces payroll at a level of 99.5% accuracy.
1. Accuracy shall be defined as paychecks being made out to the correct worker in the correct amount, and distributed to the employee at the time identified on the schedule for payment.
 - a. Paychecks shall not be considered inaccurate if they are based on timesheets that are inaccurate or untimely.
 - b. Paychecks shall not be considered inaccurate when due to errors that come about from untimely or inaccurate communication with the State or the State's designee.
 2. The Contractor shall report its accuracy measures in a manner acceptable to the State.
 3. The State shall monitor accuracy monthly.
- B. Quarterly, the Contractor shall develop and implement participant, employer, employee, and agency training as determined at the F/EA contract meetings.

17) GENERAL

State contact names and addresses for this Contract are provided below. The Contractor may send non-confidential information to these Contacts via mail, fax or email. All confidential information must be sent to these State Contacts via mail, fax or secure email.

The primary point of contact for all contract issues and for DAIL program issues:

Lisa Neveu
Department of Disabilities, Aging and Independent Living
Adult Services Division
280 State Drive, HC 2 South

Waterbury, Vermont 05671-2070
Telephone: 802.241.0296
FAX : 802.241.0385
Lisa.Neveu@vermont.gov

For DDS Issues:

Amy Roth
Department of Disabilities, Aging and Independent Living
Developmental Disabilities Services Division
Adult Services Division
280 State Drive, HC 2 South
Waterbury, Vermont 05671-2030
Telephone: 802.241.0306
FAX : 802.241.0410
Amy.Roth@vermont.gov

For Fiscal Issues:

Jim Euber
Department of Disabilities, Aging and Independent Living
Business Office
280 State Drive, HC 2 South
Waterbury, Vermont 05671-2020
Telephone: 802.241.0349
FAX: 802.241.0384
Jim.Euber@vermont.gov

For Children's Personal Care Services Issues:

Adam Poulin
Vermont Department of Health
Children with Special Health Needs
108 Cherry Street
Burlington, VT 05402
Telephone: 802.865.1395
FAX: 802.863.7635
Adam.Poulin@vermont.gov

Medicaid Fiscal Agent:

Suellen Bottiggi
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495
Telephone: 802.871.3187
Suellen.Bottiggi@vermont.gov

The State shall inform the Contractor of changes in Contact Persons' information upon receipt of notifications of changes.

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 specified in Attachment A, or services actually performed, up to the maximum allowable amount specified in this Contract. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. The following provisions specifying payments are:

A. F/EA PAYMENTS

- 1) For Developmental Services and Integrated Family Managed Services – Respite, the payment of monthly fiscal agent fees shall be based on the number of participants using the Contractor’s services. The monthly fee for each participant shall be paid to the Contractor for each month during which there is payroll activity on behalf of an authorized and enrolled participant. ‘Payroll activity’ is defined as any month in which a timesheet or invoice is processed for services provided to a participant. A monthly fee for that participant shall neither be requested nor paid if no timesheet or invoice was processed for an enrolled participant during the month. For all the other services, listed in items A.1)c) to A.1)f) below, the payment of monthly fiscal agent fees shall be based on the number of participants enrolled with the Contractor and eligible to use the Contractor’s services. The rate for each active or enrolled-and-eligible participant per month shall be as follows:
 - a) Developmental Services:
 - \$55.00 per month for February 2018 through January 2019
 - \$57.00 per month for February 2019 through January 2020
 - b) IFS -Respite:
 - \$75.00 per month for February 2018 through January 2019
 - \$78.00 per month for February 2019 through January 2020
 - c) Children's Personal Care Services, including Children’s Creative Connections:
 - \$75.00 per month for February 2018 through January 2019
 - \$78.00 per month for February 2019 through January 2020
 - d) Choices for Care, including Flexible Choices:
 - \$75.00 per month for February 2018 through January 2019
 - \$78.00 per month for February 2019 through January 2020
 - e) ASP Service:
 - \$55.00 per month for February 2018 through January 2019
 - \$57.00 per month for February 2019 through January 2020
 - f) ASP's PDAC services:
 - \$75.00 per month for February 2018 through January 2019
 - \$78.00 per month for February 2019 through January 2020
 - g) Moderate Needs Group Flexible Funding:

- \$60.00 per month for February 2018 through January 2019
 - \$63.00 per month for February 2019 through January 2020
- h) Adult Family Care Respite:
- \$60.00 per month for February 2018 through January 2019
 - \$63.00 per month for February 2019 through January 2020
- g) Traumatic Brain Injury
- \$75.00 per month for February 2018 through January 2019
 - \$78.00 per month for February 2019 through January 2020
- 2) For each weekly payroll, by program, that does not meet the accuracy criteria established in Attachment A, Section 16.A., Contractor shall develop a list of those participants whose payroll information was inaccurate in the order in which the errors were identified. At the discretion of the State, the Contractor may be required to reimburse the State for the administrative fees for those participants on the list beyond the 0.5% threshold.
- 3) The Contractor may submit invoices for the costs associated with changes to the FMS Engine modules to account for the Earned Sick Leave Law. The Contractor has provided to the State an estimate of \$328,900.00 for approximately 3,289 hours of additional development to add functionality to the Enrollment, BIT, e-timesheet and Participant Dashboard modules. Invoices must identify the actual cost of development, the amount billed to the State under this Contract, and the amounts billed to any other entity(s) served through Contractor who will also utilize these system changes for their programs/services. If the cost associated with the Earned Sick Leave Law exceeds the estimated cost, the Contractor must provide a detailed explanation and must receive written State approval prior to any additional expenditure.
- 4) The Contractor may submit invoices for training costs incurred under Attachment A, Section 9, (i.e., training requested by the State), not to exceed a maximum limit of \$500.00 per day.
- 5) The Contractor may submit invoices for completing a background check requested by the State or a DA for persons other than those being enrolled for payroll services by the fiscal agent. The State, agency or DA requesting the background check shall reimburse the Contractor at a rate of \$25.00 per background check. For Flexible Family Funding the background check may be requested by a family member in which case the Contractor shall submit invoices to the DA. For Flexible Family Funding the invoices shall be sent to the DA. The invoices for the Ombudsman Program will be sent to the Ombudsman Program.
- 6) For serving as the billing agent for the Hi-Tech Nursing providers, the State shall pay the Contractor \$1,250.00 per month for all activities listed in Attachment A.5).
- 7) It is the expectation of the State that Department of Motor Vehicle (DMV) records checks shall occur at no cost to the Contractor or the State under the terms of this Contract. In those circumstances where costs may be incurred, the State shall determine when the Contractor is required to complete a DMV records checks for participating employees, and shall inform the Contractor of these determinations. In the case of Developmental Services, any fees or other costs associated with the completion of DMV record checks shall be billed to the DA/SSA or other contracted provider and may be assigned to the individual's budget as determined by them.

- 8) For Moderate Needs Flexible Funding and Adult Family Care: The Agency will establish a business relationship with the Contractor. The Contractor will provide the Agency with billing information to set up a direct deposit payment mechanism. Contractor will add the Agency to the payroll software as a billing entity and set up a FTP site for the Agency. The Agency will submit an ARIS Enrollment form which includes the total approved budget for the participant and the effective dates. The Contractor will pay the employee timesheets up to the approved amount within 5 months of the service date. Invoices for reimbursement to the Contractor for the employee payroll will be put on the FTP site on alternate Thursday afternoons, immediately following the processing of payroll. The Contractor will email the Agency to inform them that the invoice has been added. The invoice will include a spreadsheet identifying the participant name, employee name, starting budget and ending budget for the pay-period, payroll period paid, number of hours worked, hourly rate, gross wage, employer tax, expense to the budget, balance remaining. The Agency will provide payment for the employee payroll invoice to the Contractor within five (5) business days by direct deposit. Invoices for reimbursement to the Contractor for F/EA administrative services will be posted on the FTP site on the first day of each month for services provided. The Contractor will notify the Agency via email that the invoice has been added to the FTP site, and is to be paid within two (2) weeks of placement on the FTP site.

B. F/EA PAYMENT METHOD

- 1) For CFC, CFC-Flexible Choices, PDAC-Medicaid, and CPCS: The State establishes a separate Medicaid billing code for monthly fees, the Contractor shall, on a monthly basis, submit electronic claims to the Medicaid fiscal agent for reimbursement. The Contractor shall submit claims to the Medicaid fiscal agent for only those participants whose services are reimbursed by Medicaid, and for whom the payroll costs for employees are submitted in claims to the Medicaid fiscal agent for reimbursement under Medicaid. The State will work with the Contractor to ensure reimbursement occurs if Contractor's administrative fee is denied by the Medicaid fiscal agent, and cannot be corrected through normal procedures.
- 2) For DDS and IFS-R: The Contractor shall submit monthly updates to the State (DAIL Business Office) which identifies the number of Developmental Services participants for whom payroll was processed during the month, as well as the costs of these services based on the DS rates described in this attachment. The State, at its discretion, may request names of these participants. The Contractor shall also send monthly invoices to all DA/SSAs throughout the state charging them a monthly ISO fee that is based on an approved allocation breakout per provider, supplied to the Contractor by the State. At the end of each fiscal year, the Contractor shall send the State a year-end reconciliation report showing the variance between the actual costs and the fees collected from the DS/SSAs. The State agrees to pay the Contractor if their revenue collections are less than the DS rate multiplied by the number of DS participants served over the course of that year. If the opposite occurs and the Contractor collects more revenue than it should have received based on the DS rate multiplied by the number of DS participants served, then the extra revenue shall be deferred to the following fiscal year to cover the Contractor's costs for that year.
- 3) For MNG and AFC-Respite: The Contractor shall submit invoices for F/EA administrative services directly to the agency. Invoices for monthly administrative fees for these programs will be based upon the date of the payment issued and the rates described under Attachment B, Section, A.1.
- 4) For Family Managed Respite and TBI: Until the Contractor begins billing Medicaid directly, the

Contractor shall submit a monthly invoice to the DA/SSA based on the rates described under Attachment B, Section, A.1.

- 5) The State shall inform the Contractor of any services provided to Medicaid PDAC participants which shall be reimbursed by General Funds. The Contractor shall submit a monthly invoice to the State which identifies the Medicaid PDAC participants, their employee(s), days and hours worked for whom General Fund payroll was processed during the month, as well as the costs of these services.
- 6) The Contractor shall submit a monthly invoice to the State which identifies, divided into two categories, ASP's, PDAC, and PS services, the number of participants for whom payroll was processed during the month, the total fee charged, as well as the costs of these services. The State, at its discretion, may request that the Contractor provide to the State the names of the participants.
- 7) The Contractor shall submit monthly invoices to DAIL at the rate described above for services delivered to the family directed Hi-Tech nurse/providers as described in Attachment A, Section 5.

C. GENERAL PROVISIONS

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. The Contractor agrees that the State's standard contract terms for payment of invoices are "net-30 days" for payment. However, electronic bills submitted to the Medicaid fiscal agent shall have the normal turn-around time for reimbursement of Medicaid claims, which is usually within 7 to 14 business days for completed and accurate claims.
3. Claims for payment not made by the Contractor in writing to the State, and/or not received within sixty (60) days of the expiration or termination of the contract, shall not be honored by the State for payment.
4. The Contractor agrees that funds paid under this contract shall not be used to support any lobbying activities.
5. The maximum dollar amount payable under this agreement is not intended as any form of guaranteed amount. The Contractor shall be paid at the billable rates for services actually performed, up to the maximum allowable amount of \$7,500,000.00
6. Invoices shall be directed as follows:

Jim Euber
Department of Disabilities, Aging and Independent Living
Business Office
280 State Drive, HC 2 South
Waterbury, Vermont 05671-2020

Telephone: 802.241.0349

FAX: 802.241.0384

Jim.Euber@vermont.gov

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

1. Definitions: For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

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

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

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

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

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

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

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

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

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

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

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

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

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

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

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

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

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

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

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

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

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

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

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

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

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

B. Termination for Cause: Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.

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

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

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities

which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

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

A. Requirement to Have a Single Audit: The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

A. Certification Regarding Use of State Funds: If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

B. Good Standing Certification (Act 154 of 2016): If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

ATTACHMENT D
INFORMATION TECHNOLOGY SYSTEM IMPLEMENTATION
TERMS AND CONDITIONS (rev. 4/27/17)

1. MODIFICATIONS TO CONTRACTOR DOCUMENTS

The parties specifically agree that the Contractor Documents are hereby modified and superseded by Attachment C and this Attachment D.

“Contractor Documents” shall mean one or more document, agreement or other instrument required by Contractor in connection with the performance of the products and services being purchased by the State, regardless of format, including the license agreement, end user license agreement or similar document, any hyperlinks to documents contained in the Contractor Documents, agreement or other instrument and any other paper or “shrinkwrap,” “clickwrap,” “browsewrap” or other electronic version thereof.

2. NO SUBSEQUENT, UNILATERAL MODIFICATION OF TERMS BY CONTRACTOR

Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor during the Term of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for the products and services being purchased by the State, as applicable, the components of which are licensed under the Contractor Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased by the State, as applicable, upon delivery, the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

3. TERM OF CONTRACTOR’S DOCUMENTS; PAYMENT TERMS

Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and shall have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract; provided, however, to the extent the State has purchased a perpetual license to use the Contractor’s software, hardware or other services, such license shall remain in place unless expressly terminated in accordance with the terms of this Contract. Contractor acknowledges and agrees that, to the extent a Contractor Document provides for payment terms which differ from the payment terms set forth in Attachment B, such sections shall be waived and shall have no force and effect and the terms in Attachment B shall govern.

4. OWNERSHIP AND LICENSE IN DELIVERABLES

4.1 Contractor Intellectual Property.

As between the parties, and subject to the terms and conditions of this Contract, Contractor and its third-party suppliers will retain ownership of all intellectual property rights in the System, and any and all derivative works made to the System or any part thereof, as well as all Work Product provided to the State (“**Contractor Proprietary Technology**”). The State acquires no rights to Contractor Proprietary Technology except for the licensed interests granted under this Contract. The term “**Work Product**” means all other materials, reports, manuals, visual aids, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided or created by Contractor or its employees or contractors during the course of performing work for the State (excluding any State Data or derivative works thereof and excluding any output from the System generated by the State’s use of the System, including without limitation, reports, graphs, charts and modified State Data, but expressly including any form templates of such reports, graphs or charts by themselves that do not include the State Data).

Title, ownership rights, and all Intellectual Property Rights in and to the System will remain the sole property of Contractor or its suppliers. The State acknowledges that the source code is not covered by any license hereunder and will not be provided by Contractor. Except as set forth in this Contract, no right or implied license or right of any kind is granted to the State regarding the System or any part thereof. Nothing in this Contract confers upon either party any right to use the other party's trade names and trademarks, except for permitted license use in accordance with this Contract. All use of such marks by either party will inure to the benefit of the owner of such marks, use of which will be subject to specifications controlled by the owner.

4.2 State Intellectual Property; User Name

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 collect, access or 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.

4.3 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.

5. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

5.1 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.

5.2 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 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.

5.3 Confidentiality of State Information. In performance of this Contract, and any exhibit or schedule hereunder, the Contractor acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. ("State Data"). In addition to the provisions of this Section, the Contractor shall comply with the requirements set forth in the State's HIPAA Business Associate Agreement attached to this Contract as Attachment E.

State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all State Data. The Contractor agrees that (a) it will use the State Data only as may be necessary in the course of performing duties or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information; (c) it will not publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State and 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 State'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 will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract.

Contractor shall not access State user accounts or State Data, except in the course of data center operations, response to service or technical issues, as required by the express terms of this Contract, or at State's written request.

Contractor may not share State Data with its parent company or other affiliate without State's express written consent.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

6. SECURITY OF STATE INFORMATION

6.1 Security Standards. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates 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, but not be limited to, encryption at rest and 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.

6.2 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.

6.3 Security Policies. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

6.4 Operations Security. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor shall cause an SSAE 18 SOC 2 Type 2 audit report to be conducted annually. The audit results and the Contractor's plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor's receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Contractor's fiscal year, the Contractor shall transmit its annual audited financial statements to the State.

6.5 Redundant Back-Up. The Contractor shall maintain a fully redundant backup data center geographically separated from its main data center that maintains near realtime replication of data from the main data center. The Contractor's back-up policies shall be made available to the State upon request. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

6.6 Vulnerability Testing. The Contractor shall run quarterly vulnerability assessments and promptly report results to the State. Contractor shall remediate all critical issues within 90 days, all medium issues within 120 days and low issues within 180 days. Contractor shall obtain written State approval for any exceptions. Once remediation is complete, Contractor shall re-perform the test.

7. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

7.1 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 outstanding 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 Deliverables 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 Deliverables 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.

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

- (i) All Deliverables will be free from material errors and shall perform in accordance with the specifications therefor for a period of at least one year.
- (ii) Contractor will provide to the State commercially reasonable continuous and uninterrupted access to the Service, and will not interfere with the State's access to and use of the Service during the term of this Contract;
- (iii) The Service is compatible with and will operate successfully with any environment (including web browser and operating system) specified by the Contractor in its documentation;
- (iv) 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.
- (v) All Deliverables supplied by the Contractor to the State shall be transferred free and clear of any and all restrictions on the conditions of transfer, modification, licensing, sublicensing and free and clear of any and all liens, claims, mortgages, security interests, liabilities and encumbrances or any kind.
- (vi) 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.
- (vii) 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.

7.3 Limitation on Disclaimer. The express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.

7.4 Effect of Breach of Warranty. If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall, at its own expense and without limiting any other rights or remedies of the State hereunder, re-

perform or replace any services that the State has determined to be unsatisfactory in its reasonable discretion. Alternatively, with State consent, the Contractor may refund of all amounts paid by State for the nonconforming deliverable or service.

8. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$1,000,000.00 per claim, \$3,000,000.00 aggregate; and (b) first party Breach Notification Coverage of not less than \$1,000,000.00; and (c) Employee Dishonesty Coverage with limits not less than \$1,000,000 per claim, \$1,000,000 aggregate.

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

With respect to the first party Breach Notification Coverage, Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Contract.

9. LIMITATION OF LIABILITY.

CONTRACTOR'S LIABILITY FOR DAMAGES TO THE STATE ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT SHALL NOT EXCEED THREE TIMES THE MAXIMUM AMOUNT PAYABLE UNDER THIS CONTRACT, OR \$1,000,000.00, WHICHEVER IS GREATER LIMITS OF LIABILITY FOR STATE CLAIMS SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT; OR (E) VIOLATIONS OF THE STATE OF VERMONT FRAUDULENT CLAIMS ACT. IN NO EVENT SHALL THIS LIMIT OF LIABILITY BE CONSTRUED TO LIMIT CONTRACTOR'S LIABILITY FOR THIRD PARTY CLAIMS AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR'S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOST PROFITS, INCOME, GOODWILL, OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement.

10. TRADE SECRET, PATENT AND COPYRIGHT INFRINGEMENT

The State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.

11 REMEDIES FOR DEFAULT; NO WAIVER OF REMEDIES

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.

No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a waiver of any such right, power or remedy, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

12 NO ASSUMPTION OF COSTS

Any requirement that the State defend or indemnify Contractor or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of Contractor, is hereby deleted from the Contractor Documents.

13 TERMINATION

Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to the State all State information, State Intellectual Property or State Data (including without limitation any Deliverables for which State has made payment in whole or in part) ("State Materials"), 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.

In the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Materials to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Materials.

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 Materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting the State Materials, 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.

14. ACCESS TO STATE DATA:

The State may import or export State Materials in part or in whole at its sole discretion at any time (24 hours a day, seven (7) days a week, 365 days a year), during the term of this Contract or for up to three (3) months after the Term (so long as the State Materials remain in the Contractor's possession) without interference from the Contractor in a format usable without the Service and in an agreed-upon file format and medium at no additional cost to the State.

The Contractor must allow the State access to information such as system logs and latency statistics that affect its State Materials and or processes.

The Contractor's policies regarding the retrieval of data upon the termination of services have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

15. AUDIT RIGHTS

Contractor will maintain and cause its permitted contractors to maintain a complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. Contractor will provide to the State, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor personnel and to any and all Contractor facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Contractor and/or Contractor personnel and/or any or all of the records, data and information applicable to this Contract.

At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor (or such higher or more rigorous standards, if any, as State or Contractor applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Contractor's and/or its permitted contractors' operations and security procedures and controls; (iv) examine and verify Contractor's and/or its permitted contractors' disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Contractor's and/or its permitted contractors' performance of the Services including audits of: (1) practices and procedures; (2) systems, communications and information technology; (3) general controls and physical and data/information security practices and procedures; (4) quality initiatives and quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (6) Contractor's and/or its permitted contractors' efficiency and costs in performing Services; (7) compliance with the terms of this Contract and applicable laws, and (9) any other matters reasonably requested by the State. Contractor shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software.

16. DESTRUCTION OF STATE DATA

At any time during the term of this Contract within (i) thirty days of the State's written request or (ii) three (3) months of termination or expiration of this Contract for any reason, and in any event after the State has had an opportunity to export and recover the State Materials, Contractor shall at its own expense securely destroy and erase from all systems it directly or indirectly uses or controls all tangible or intangible forms of the State Materials, in whole or in part, and all copies thereof except such records as are required by law. The destruction of State Data and State Intellectual Property shall be performed according to National Institute of Standards and Technology (NIST) approved methods. Contractor shall certify in writing to the State that such State Data has been disposed of securely. To the extent that any applicable law prevents Contractor from destroying or erasing State Materials as set forth herein, Contractor shall retain, in its then current state, all such State Materials then within its right of control or possession in accordance with the confidentiality, security and other requirements of this Contract, and perform its obligations under this section as soon as such law no longer prevents it from doing so.

Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location 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.

17 CONTRACTOR BANKRUPTCY.

Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case

under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Intellectual Property.

18 IRS TERMS IF FEDERAL TAX INFO WILL BE PROCESSED OR STORED (Per IRS Publication 1075)

To the extent Contractor's performance under this Contract involves the processing or storage of Federal tax information, then, pursuant to IRS Publication 1075, the following provisions shall apply in addition to any other security standard or requirements set forth in this Contract:

A. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

1. All work will be done under the supervision of the Contractor or the Contractor's employees.
2. The Contractor and the Contractor's employees with access to or who use Federal tax information must meet the background check requirements defined in IRS Publication 1075.
3. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
4. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
5. The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
6. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the State or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.
7. All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
8. No work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS.
9. The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.

10. The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.


B. CRIMINAL/CIVIL SANCTIONS:

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431, and set forth at 26 CFR 301.6103(n)-1.
3. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
4. Prior to Contractor having access to Federal tax information, Contractor shall certify that each Contractor employee or other individual with access to or who use Federal tax information on Contractor's behalf pursuant to this Contract understands the State's security policy and procedures for safeguarding Federal tax information. Contractor's authorization to access Federal tax information hereunder shall be contingent upon annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification, and at least annually afterwards, Contractor will be advised of the provisions of IRCs 7431, 7213, and 7213A (see IRS Publication 1075 *Exhibit 4, Sanctions for Unauthorized Disclosure*, and *Exhibit 5, Civil Damages for Unauthorized Disclosure*). The training provided

before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches (See Publication 1075, Section 10). For both the initial certification and the annual certification, the Contractor must sign a confidentiality statement certifying its understanding of the security requirements.

C. INSPECTION:

The IRS and the State, with 24 hours' notice, shall have the right to send its officers, employees, and inspectors into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract for compliance with the requirements defined in IRS Publication 1075. The IRS's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology assets that access, store, process or transmit Federal tax information. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

 e-Signed by Jared Bianchi
on 2018-01-12 19:20:21 GMT

ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its AHS/DAIL (“Covered Entity”) and ARIS SOLUTIONS, INC., (“Business Associate”) as of February 1, 2018 (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

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

The parties agree as follows:

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

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

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

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

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

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

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

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

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

2. Identification and Disclosure of Privacy and Security Offices. Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the

Covered Entity's contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

3. Permitted and Required Uses/Disclosures of PHI.

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

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 18 or, (b) as otherwise permitted by Section 3.

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

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

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

6. Documenting and Reporting Breaches.

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

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

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

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

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

8. **Providing Notice of Breaches.**

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

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

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

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

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

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

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

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

12. Accounting of Disclosures. Business Associate shall document disclosures of PHI and all

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

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

14. Termination.

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 19.8.

14.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate the contract or grant without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under the contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

15. Return/Destruction of PHI.

15.1 Business Associate in connection with the expiration or termination of the contract or grant shall return or destroy, at the discretion of the Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this contract or grant that Business Associate still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI. Business Associate shall certify in writing for Covered Entity (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI. Business Associate is to provide this certification during this thirty (30) day period.

15.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes

that make the return or destruction infeasible for so long as Business Associate maintains such PHI. This shall also apply to all Agents and Subcontractors of Business Associate.

16. Penalties. Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

17. Training. Business Associate understands that it is its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, Business Associate shall participate in AHS training regarding the use, confidentiality, and security of PHI, however, participation in such training shall not supplant nor relieve Business Associate of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

18. Security Rule Obligations. The following provisions of this section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

18.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

18.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

18.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or Subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than two (2) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

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

19. Miscellaneous.

19.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract/grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract/grant continue in effect.

19.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

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

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

19.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

19.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity even if some of that information relates to specific services for which Business Associate may not be a "Business Associate" of Covered Entity under the Privacy Rule.

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

19.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 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: 7/7/17

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

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

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

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

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

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

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

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

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

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

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

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

5. **Non-Discrimination:**

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

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to

discrimination, to include sexual harassment, under any program or activity supported by State of Vermont and/or federal funds.

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

6. **Employees and Independent Contractors:**

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

7. **Data Protection and Privacy:**

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

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

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

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

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

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

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

Abuse Registry: Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact 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 6 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 12.31.16