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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION FOR CHILDREN, YOUTH & FAMILIES

Lori A. Shabinette
 Commissioner

Joseph E. Ribsam, Jr.
 Director

129 PLEASANT STREET, CONCORD, NH 03301-3857
 603-271-4451 1-800-852-3345 Ext. 4451
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November 18, 2020

His Excellency, Governor Christopher T. Sununu
 and the Honorable Council
 State House
 Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division for Children, Youth and Families, to enter into a **Sole Source** agreement with the State of Vermont, 103 South Main Street; Waterbury, Vermont, in the amount of \$6,499,848 to provide secure residential treatment and educational services to delinquent youth from the State of Vermont at the Sununu Youth Services Center, with the option to renew for up to two (2) additional years, effective December 2, 2020, or upon Governor and Council approval, whichever is later, through October 31, 2022. 100% Agency Income.

Funds received to support this request will be deposited into the following accounts and budgeted, pending Fiscal Committee approval of the additional revenue for State Fiscal Year 2021 and approval of the State Fiscal Year 2022 and 2023 operating budget, to allow the Division for Children, Youth and Families to pay for expenses incurred at the Sununu Youth Services Center.

**05-95-42-421510-79140000 HEALTH AND SOCIAL SERVICES; HEALTH AND HUMAN SVCS
 DEPT OF, HHS: HUMAN SERVICES; SUNUNU YOUTH SERVICE CENTER, MAINTENANCE**

State Fiscal Year	Class / Account	Class Title	Revenue Code	Total Amount
2021	007	Contracts for Program Services	407085	\$776,169
2022	007	Contracts for Program Services	407085	\$1,380,613
2023	007	Contracts for Program Services	407085	\$279,149
			Sub Total	\$2,435,931

**05-95-42-421510-79150000 HEALTH AND SOCIAL SERVICES; HEALTH AND HUMAN SVCS
 DEPT OF, HHS: HUMAN SERVICES, SUNUNU YOUTH SERVICE CENTER, HEALTH SERVICES**

State Fiscal Year	Class / Account	Class Title	Revenue Code	Total Amount
2021	007	Contracts for Program Services	407085	\$1,293,615
2022	007	Contracts for Program Services	407085	\$1,932,857
2023	007	Contracts for Program Services	407085	\$837,445
			Sub Total	\$4,063,917
			Total	\$6,499,848

EXPLANATION

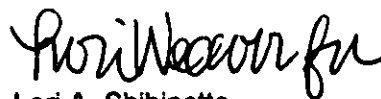
The Purpose of this agreement is to allow the Division for Children, Youth and Families to provide Secure Treatment Services for Vermont youth who have committed delinquent offenses or violated court orders and whose treatment needs may be best serviced at the Sununu Youth Services Center. The Sununu Youth Services Center is able to provide an array of specialized clinical programming that meets the identified treatment needs of specific Vermont Youth. The Sununu Youth Services Center previously successfully provided similar services to Vermont youth and the Department would like to renew this relationship.

This agreement will mutually benefit the State of Vermont by meeting the treatment needs of its youth and the State of New Hampshire, which will earn up to a maximum of \$6.4 million based on actual utilization, of additional revenue and increase operational efficiency at the Sununu Youth Services Center. The State of Vermont will pay a total daily rate of \$1,513 per youth, per day, to the Department through this agreement.

Should the Governor and Executive Council not approve this request, Sununu Youth Services Center will continue to look for potential ways to utilize the facility and alleviate costs to the state by researching other revenue opportunities.

Source of Funds: 100% Agency Income from the State of Vermont

Respectfully submitted,



Lori A. Shibinette
Commissioner

1. **Parties.** This is a contract for personal services between the State of Vermont, Department for Children and Families – Family Services Division (hereafter called "State"), and the State of New Hampshire Department of Health and Human Services (hereafter called "Contractor"). The Contractor's form of business organization is a government agency.
2. **Subject Matter.** The subject matter of this contract is personal services generally on the subject secure out of state youth residential treatment facility. 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 \$6,499,848.00.
4. **Contract Term.** The period of Contractor's performance shall begin on November 15, 2020 or upon New Hampshire Governor and Executive Council approval and end on October 31, 2022 with the option of two (2) two year renewals.
5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current state laws, bulletins, and interpretations and approved by the New Hampshire Governor and Executive Council.
- 5A. **Sole Source Contract for Services.** This Contract results from a "sole source" procurement under State of Vermont Administrative Bulletin 3.5 process and Contractor hereby certifies it will comply with all applicable campaign finance laws.
6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor and approved by the New Hampshire Governor and Executive Council.
7. **Termination for Convenience.** This contract may be terminated by the State or the Contractor 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 pursuant to this contract prior to the effective date of termination.
8. **Attachments.** This contract consists of 28 pages including the following attachments which are incorporated herein:
 - Attachment A - Statement of Work
 - Attachment B - Payment Provisions
 - Attachment C – "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 12/15/2017)
 - Attachment D - Other Provisions
 - Attachment E – Business Associate Agreement (N/A)
 - Attachment F – "AHS Customary Contract Provisions"
 - Attachment I – Permission to Photo
 - Attachment J – Notification
9. **Order of Precedence.** Any ambiguity, conflict or inconsistency between the documents comprising this contract shall be resolved according to the following order of precedence:
 - (1) Standard Contract
 - (2) Attachment D
 - (3) Attachment C (Standard Contract Provisions for Contracts and Grants)
 - (4) Attachment A
 - (5) Attachment B

STATE OF VERMONT, STANDARD CONTRACT FOR SERVICES
DEPARTMENT FOR CHILDREN AND FAMILIES
STATE OF NEW HAMPSHIRE DEPARTMENT OF HEALTH & HUMAN SERVICES

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CONTRACT #40797

(6) Attachment E

(7) Attachment F

(8) Attachment I

(9) Attachment J

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

Date: _____

E-SIGNED by Christine Johnson
on 2020-11-03 18:42:21 GMT

Signature: _____

Name: Christine Johnson (or, designee)

Title: DCF/FSD Deputy Commissioner

Email: Christine.johnson@vermont.gov

By the Contractor:

Date: _____

E-SIGNED by Joseph Ribsam
on 2020-11-03 18:39:42 GMT

Signature: _____

Name: Joseph Ribsam Jr.

Title: Director, Division for Children, Youth &
Families

Email: joseph.ribsamJr@dhhs.nh.gov

Copy to: Jennifer.hackett@dhhs.nh.gov

The preceding Agreement, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

11/13/20

Date

Catherine Pinos

Name: Catherine Pinos

Title: Attorney

I hereby certify that the foregoing Agreement was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: _____ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:

Title:

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

SUMMARY OF PROGRAM:

The Sununu Youth Services Center ("SYSC") program is an architecturally secure residential treatment facility for adjudicated and detained youth. SYSC provides short and long-term care for youth detained or committed by the court. Services provided are designed to meet the unique needs of juveniles who encounter the juvenile court system. The State of New Hampshire is committed to providing a safe living environment through evidence-based practice, a strengths-based approach, comprehensive education, and quality healthcare services. The program is for juveniles between the ages of 13 through 17. Youth will be classified and assigned to a secure residential unit where they will participate in a prescribed behavioral program that includes academia, structured recreation, community service, individual and group services, family mediation, and access to medical, mental health, and substance abuse intervention and treatment.

This contract is written for up to six (6) youth referred by the State of Vermont and accepted by the Contractor.

A. SERVICES TO BE PROVIDED

1. Contractor will provide or arrange for suitable care, treatment, and supervision for the benefit of placed children/youth. Program description can be located online at: <https://www.dhhs.nh.gov/dcyf/policies.htm#ch11>.
2. Contractor will provide or arrange for regular visits by parents, relatives, and friends, subject to the restrictions the State may impose. The State must provide a prior notice of such restrictions to Contractor.
3. Contractor will not limit visitation privileges of placed children/youth for reasons of discipline.
4. Contractor will provide customary local transportation for those children/youth that have been determined through the Case Plan to need those community-based services not normally provided by contract.
5. Contractor will arrange educational experiences appropriate to each child/youth's needs, including transportation if necessary. State will be responsible for the cost of the transportation. Each child/youth's education plan will be discussed with and agreed to by State.
6. Contractor will work toward integrating placed children/youth into the affairs of the local community, when specified in Case Plan.
7. Contractor will notify the responsible State Caseworker and appropriate authorities immediately when it is determined that a child/youth has run away, been in an accident, or appears to have a serious illness. Verbal communication (in person, telephone, cellular) contact will be followed up with a written Notification to the social worker with a copy being sent to the client placement specialist. (Attachment J).
8. Contractor will provide the child/youth's State Social Worker and the responsible Local Education Agency (LEA) with the appropriate weekly Progress Reports and Monthly Treatment updates.
9. Contractor shall develop (with State designee) a comprehensive treatment plan. State will develop with the Contractor projected discharge date and transition/discharge plan.
10. Contractor will maintain a current photograph of placed child/youth on file for the purposes of identification should the youth be absent without leave (on run) from the facility. An updated photograph will be taken every six months so that there is a current photo on file in the event that it is needed. Permission to Photograph child/youth (Attachment I) will be provided from the State Social Worker to the Contractor upon admission to the facility and updated as necessary during the child/youth's placement.
11. Contractor will allow a minimum of two (2) visits per month per youth by State Social Worker and/or a member of the Specialized Services Unit. Visits will be held virtually during COVID unless the State determines they are unable to maintain case needs. In such circumstances, the State will request pre-approval for in-person visits through the Contractor's Program Director which shall not be unreasonably withheld.

B. ADMISSIONS/DISCHARGES

1. Admissions:
 - a. Contractor will accept into its care those children/youth referred by the State who are determined jointly by the State and Contractor to be appropriate for placement.
 - b. Contractor will provide the standard intake package to the State to complete for review and acceptance for the purpose of determining admission. Other information may be requested by the Contractor subsequent to placement for the purpose of establishing the Case Plan.
 - c. Admission/denial notification to the Vermont Department for Children and Families Social Worker shall occur within 24 hours of receipt of the referral packet from the State.
 - d. When admission is denied, the Contractor will convey the reasons for that denial in writing within three (3) days of the interview to the assigned Department for Children and Families Social Worker and the Department for Children and Families Client Placement Specialist.

2. Discharges:

- a. Planned discharge decisions will be made jointly by the Contractor and State upon anticipated completion of the Case Plan.
- b. Under extreme circumstances, when the placement is determined by either party to be inappropriate, that party shall notify the other party of a 15-day discharge date. Transition arrangements will be coordinated between the Department for Children and Families, Family Services District Office, the State Specialized Services Unit and the Contractor.
- c. When a child/youth leaves the program, a copy of the discharge summary shall be sent with the child/youth, with copies being sent to the Vermont Department for Children and Families Social Worker and the State Specialized Services Unit. The Contractor shall develop a transition and transportation plan for all children/youth upon reaching their Case Plan goals.
- d. The State will be responsible for the cost of transportation associated with discharge.

C. The Contractor shall make available and provide to the State any and all information gathered in the course of providing services under this contract to children/youth in State custody and their families or for open State Family Cases. The Contractor shall inform any child/youth in State custody or any individual in an open family case who is receiving services under this contract, that any statements made during the course of providing services to them as well as information about the services provided, may be communicated to the State upon its request for case planning purposes.

D. The Contractor shall maintain and update the policies for the Sununu Youth Services Center that may be found at the following website: <https://www.dhhs.nh.gov/dcyf/policies.htm#ch11>. This website includes but is not limited to: Admission and orientation; safety and security; resident rights and privileges; clinical services; educational services; healthcare; and recreational activities.

E. Contractor will make available to all residents the full array of services for 365/366 days a year. (Children/Youth are placed in this program because of their need for an ongoing intensive level of service.)

F. **SPECIFICATIONS:**

In order to ensure that placements receive appropriate health care, the State may disclose personally identifiable health information regarding a placement ("placement PHI") to Contractor employees, but only under the following conditions:

1. Placement PHI may be disclosed by the State only to Contractor employees who meet the definition of "health care provider" under the Health Insurance Portability and Accountability Act ("HIPAA"). Contractor warrants that the following job categories include such employees:
 1. Registered Nurse
 2. Psychologist
 3. Dentist
 4. Hygienist
 5. Medical Doctor
 6. Psychiatrist
 7. Psychological Associate
 8. Manager of Medical Services
2. Employees of Contractor who receive placement PHI by virtue of being health care providers within the meaning of HIPAA may disclose placement PHI to other employees and agents of Contractor only for the purpose of coordination or management of health care and related services, consistent with HIPAA's definition of treatment. Any such disclosure must consist of the minimum amount of PHI necessary to accomplish the purpose of the disclosure.
3. Contractor will be solely responsible for the use and disclosure of Placement PHI in accordance with HIPAA and this agreement.
4. Contractor will facilitate medical care for youth outside of the facility when required. All related medical expenses will be the responsibility of the State and any outside medical services are to be billed directly to the State. The Contractor is not responsible for said expenses and will request invoices be sent directly to the State on the youth's behalf.

G. PROGRAM BASED PERFORMANCE INDICATORS

1. Contractor will abide by the rules and regulations as determined by the state in which the program resides. Failure to abide by these rules and regulations may result in termination of the contract at the discretion of the State Program Manager.
 - a. Contractor is not bound by the State of Vermont licensing regulations; however, Contractor may review them online at: http://dcf.vermont.gov/sites/dcf/files/pdf/fsd/RTP_regs.pdf.
2. Contractor will notify the State in the event youth requires non-emergent prescription medication. The State will provide informed consent in its reasonable discretion.
3. Contractor is to notify the Vermont Department for Children and Families, Family Services immediately, or as soon as reasonably possible after an event, followed by a written report within 24 hours should any of the following occur:
 - a. A youth has any critical incidents such as a runaway, an accident/injury which requires emergency medical response, suicide attempts, death of resident, inappropriate sexual activity, physical restraint, incidents where police are involved and any other reportable incidents.
 - b. During business hours, Contractor is to notify the Vermont Department for Children and Families caseworker directly; all other times, Contractor is to notify the Vermont Department for Children and Families, Emergency Services Program (ESP) at 1.800.649.5285.
4. Expected Program Outcomes for Children/Youth:
The program will operate through a therapeutic milieu which provides residents with a structured daily routine and models of pro-social behavior. Expected outcomes include:
 - a. Residents are safe and secure.
 - b. Residents are successful in school, family and the community.
 - c. Residents are involved with family pursuant to the case plan.
 - d. Delinquent children/youth are free from criminal behavior while in the program.
 - e. Residents transition from placement to a less restrictive setting.
5. The State will notify the Contractor, if at any time during the contract period or upon review, the State believes the Contractor is not performing the terms as outlined in this contract. Notification may include a course of action such as a written amendment or remediation plan.

H. CONTACTS FOR THIS CONTRACT:

Contractor

Director of Operations

Rhonda Henault-Chasse

(C) 603-931-0836

(E) Rhonda.Henault@dhhs.nh.gov

Human Services Finance Director

Rebecca Lorden, BS, CPS

(C) 603-573-6587

(E) Rebecca.Lorden@dhhs.nh.gov

Administrative Assistant

Luanne Blais

(P) 603-625-5471

(E) Luanne.Blais@dhhs.nh.gov

Admissions:

DHHS-SYSC-Communication@dhhs.nh.gov

State of Vermont

Specialized Services Unit Manager:

Melanie D'Amico (P): 802-793-2416 (E): melanie.damico@vermont.gov

Agreement Specialist:

Nancy Williams (P): 802-585-5585 (E): nancy.williams@vermont.gov

Administrative Assistant:

Lisa Nisen (P): 802-241-0874 (E): ahs.dcfdsdreuinvoices@vermont.gov

Agency of Education:

Alicia Hanrahan (P): 802-479-1206 (E): Alicia.hanrahan@vermont.gov

If contact information changes (people, phone number(s) or e-mail(s)) during the agreement term, it is the responsibility of the Contractor to notify the Agreement Specialist.

All Financial Inquiries, please e-mail Carrie Marshia at: AHS.DCFBOFoCare@vermont.gov or carrie.marshia@vermont.gov.

**ATTACHMENT B
PAYMENT PROVISIONS**

Vermont payment terms are net 30 days from date of invoice and must be received on the Out of State Residential Facility Invoice (Attachment G). In addition, Vermont State Fiscal Year Close Out starts the last week of May/first week of June and runs through early July. During this period of time, no financial reports or invoices are processed for payment in the State of Vermont Vision system.

The maximum dollar amount payable under this agreement 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 agreement. 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: Cost of Room & Board: \$729, Cost of Education: \$784 for a combined daily rate payment of: \$1,513.00.

A. For its part, in consideration of the services delivered by Contractor pursuant to this contract, the State agrees to make payment per youth / per day at the daily rate of: \$1,513.00

1. The State will be responsible for all transportation costs relating to admission or discharge from the program.
2. The State will be responsible for transportation costs related to scheduled visits with prior approval from the caseworker.
3. Contractor may be paid for services provided prior to the execution date of this agreement.
4. Contractor will invoice the State by the fifth day of each month for services provided during the previous month using the Out of State Residential Facility Invoice (Attachment G).

B. Total contract term is from: 11/15/2020 to 10/31/2022. Total # of days during contract term is: 716

716 (# of days) x \$1,513 (daily rate) x 6 youth = \$6,499,848.00

SFY21 – 228 days: 11/15/2020 – 06/30/2021 = max is \$2,069,784.00

SFY22 – 365 days: 07/01/2021 – 06/30/2022 = max is \$3,313,470.00

SFY23 – 123 days: 07/01/2022 – 10/31/2022/30/2022 = max is \$1,116,594.00

C. Total Contract Ceiling: \$6,499,848.00 (Actual per diem rate increases to be approved according to requirements in number 1 below.)

1. Contractor will secure regular and emergency optical, dental and medical services for youth from physicians. State shall assume responsibility for payment of these services including any medications and appliances.
2. When a child is not in placement and the caseworker intends for the child to return to this program, payment may continue to the Contractor for up to fifteen (15) days.
3. Transfers by the youth to an off-site location and approved by the State of Vermont for up to three (3) days will not affect payment to the Contractor.
4. Visitation will be arranged with the collaboration of the assigned State of Vermont Department for Children and Families caseworker in accordance with the Case Plan.
5. Failure to comply with the specifications as outlined in Attachment A may result in payments being withheld.

Remittance address is:

Division for Children, Youth and Families – Sununu Youth Services Center
1056 N. River Road
Manchester, New Hampshire 03104

Invoices are to be sent electronically through a secure network by the fifth (5th) business day of the month to:

Carrie Marshia, carrie.marshia@vermont.gov
Nancy Williams, nancy.williams@vermont.gov
Melanie D'Amico, melanie.damico@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 reserve 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.

STATE OF NEW HAMPSHIRE DEPARTMENT OF HEALTH & HUMAN SERVICES

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
MODIFICATION OF CUSTOMARY PROVISIONS
OF
ATTACHMENT C OR ATTACHMENT F

1. The insurance requirements contained in Attachment C, Section 8 are hereby deleted and replaced with:

The Contractor, the State of New Hampshire, is a self-insured entity.

2. Requirements of other Sections in Attachment C are hereby modified as follows:

Section 3. Applicable Law: This Section is deleted in its entirety as inapplicable..

Section 4. Sovereign Immunity: This section is deleted in its entirety and replaced with:

The State and the Contractor reserve all immunities, defenses, rights or actions arising out of the State's sovereign status, the Contractor's sovereign immunity 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.

Section 5: No Employee Benefits For Party. The following sentence is deleted: 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.

Section 8: Insurance. This section is deleted and replaced with: The Contractor, the State of New Hampshire, is a self-insured entity.

Section 14: Fair Employment Practices and Americans with Disabilities Act. This section is deleted and replaced with: The Contractor, the State of New Hampshire, is in compliance with this regulation, this requirement is waived.

Section 15: Set Off. This section is deleted in its entirety.

Section 16: Taxes Due to the State. This section is deleted and replaced with: The Contractor, the State of New Hampshire, is waived from this requirement.

Section 18: Child Support. This section is hereby deleted and replaced with: The Contractor, the State of New Hampshire, is waived from this requirement.

Section 24. Confidentiality: This section is deleted in its entirety and replaced with:

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. The State acknowledges and agrees that this agreement and any and all information obtained by the Contractor in connection with this Agreement are subject to New Hampshire's Right-to-Know law, N.H. R.S.A. 91-A.

3. Requirements of Sections in Attachment F are hereby modified as follows:

Section 6. Employees and Independent Contractors: This section is deleted in its entirety and replaced with:

Party agrees that it shall comply with the laws of the State of New Hampshire 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.

Section 10. Other Provisions: This section is deleted in its entirety and replaced with:

Environmental Tobacco Smoke. Public Law 103-227 (also known as the Pro-Children Act of 1994) and New Hampshire Indoor Smoking Act (ISA) RSA 155:64-77, 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.

**ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT**

**SOV CONTRACTOR/GRANTEE/BUSINESS ASSOCIATE: STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH & HUMAN SERVICES**

SOV CONTRACT NO. 40797

CONTRACT EFFECTIVE DATE: 11/15/2020

This Business Associate Agreement ("Agreement") is entered into by and between the State of Vermont Agency of Human Services, operating by and through its Department for Children and Families, Family Services Division ("Covered Entity") and Party identified in this Agreement as Contractor or Grantee above ("Business Associate"). This Agreement supplements and is made a part of the contract or grant ("Contract or Grant") to which it is attached.

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

The parties agree as follows:

1. **Definitions.** All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

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

"Breach" means the acquisition, Access, Use or Disclosure of *Protected Health Information (PHI)* which compromises the Security or privacy of the *PHI*, except as excluded in the definition of *Breach* in 45 CFR § 164.402.

"Business Associate" shall have the meaning given for "Business Associate" in 45 CFR § 160.103 and means Contractor or Grantee and includes its Workforce, *Agents* and *Subcontractors*.

"Electronic PHI" shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 45 CFR § 160.103.

"Individual" includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

"Protected Health Information" ("PHI") shall have the meaning given in 45 CFR § 160.103, limited to the *PHI* created or received by *Business Associate* from or on behalf of Covered Entity.

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

"Report" means submissions required by this Agreement as provided in section 2.3.

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

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

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

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

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

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

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

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

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

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

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Subject to the terms in this Agreement, *Business Associate* may Use or Disclose *PHI* to perform *Services*, as specified in the Contract or Grant. Such Uses and Disclosures are limited to the minimum necessary to provide the *Services*. *Business Associate* shall not Use or Disclose *PHI* in any manner that would constitute a violation of the Privacy Rule if Used or Disclosed by Covered Entity in that manner. *Business Associate* may not Use or Disclose *PHI* other than as permitted or required by this Agreement or as *Required by Law* and only in compliance with applicable laws and regulations.

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

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

4. **Business Activities.** *Business Associate* may Use *PHI* if necessary for *Business Associate's* proper management and administration or to carry out its legal responsibilities. *Business Associate* may Disclose *PHI* for *Business Associate's* proper management and administration or to carry out its legal responsibilities if a Disclosure is *Required by Law* or if *Business Associate* obtains reasonable written assurances via a written agreement from the Person to whom the information is to be Disclosed that such *PHI* shall remain confidential and be Used or further Disclosed only as *Required by Law* or for the purpose for which it was Disclosed to the Person, and the Agreement requires the Person to notify *Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to accomplish such purposes.

5. Electronic PHI Security Rule Obligations.

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

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

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

c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of *Electronic PHI*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *Electronic PHI*, and be provided to Covered Entity upon request;

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

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

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

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

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

6. Reporting and Documenting Breaches.

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

6.2 Following the *Report* described in 6.1, *Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Business Associate* shall provide Covered Entity with the names of any *Individual* whose Unsecured *PHI* has been, or is reasonably believed to have been, the subject of the *Breach* and any other available information that is required to be given to the affected *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Business Associate* shall provide information necessary for Covered Entity to investigate the impermissible Use or Disclosure. *Business Associate* shall continue to provide to Covered Entity information concerning the *Breach* as it becomes available.

6.3 When *Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the *PHI* had been compromised.

7. **Mitigation and Corrective Action.** *Business Associate* shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible Use or Disclosure of *PHI*, even if the impermissible Use or Disclosure does not constitute a *Breach*. *Business Associate* shall draft and carry out a plan of corrective action to address any incident of impermissible Use or Disclosure of *PHI*. *Business Associate* shall make its mitigation and corrective action plans available to Covered Entity upon request.

8. Providing Notice of Breaches.

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Business Associate* was responsible, and if requested by Covered Entity, *Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *Business Associate* shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. *Business Associate* shall be responsible for the cost of notice and related remedies.

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

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

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

9. **Agreements with Subcontractors.** *Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Business Associate* must enter into such written agreement before any Use by or Disclosure of *PHI* to such *Subcontractor*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *PHI*. *Business Associate* shall provide a copy of the written agreement it enters into with a *Subcontractor* to Covered Entity upon request. *Business Associate* may not make any Disclosure of *PHI* to any *Subcontractor* without prior written consent of Covered Entity.

10. **Access to PHI.** *Business Associate* shall provide access to *PHI* in a Designated Record Set to Covered Entity or as directed by Covered Entity to an *Individual* to meet the requirements under 45 CFR § 164.524. *Business Associate* shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for Access to *PHI* that *Business Associate* directly receives from an *Individual*.

11. **Amendment of PHI.** *Business Associate* shall make any amendments to *PHI* in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an *Individual*. *Business Associate* shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for amendment to *PHI* that *Business Associate* directly receives from an *Individual*.

12. **Accounting of Disclosures.** *Business Associate* shall document Disclosures of *PHI* and all information related to such Disclosures as would be required for Covered Entity to respond to a request by an *Individual* for an accounting of disclosures of *PHI* in accordance with 45 CFR § 164.528. *Business Associate* shall provide such information to Covered Entity or as directed by Covered Entity to an *Individual*, to permit Covered Entity to respond to an accounting request. *Business Associate* shall provide such information in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any accounting request that *Business Associate* directly receives from an *Individual*.

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

14. Termination.

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all the *PHI* is destroyed or returned to Covered Entity subject to Section 18.8.

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

15. Return/Destruction of PHI.

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

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

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

17. Training. *Business Associate* understands its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, *Business Associate* shall participate in Covered Entity's training regarding the Use, Confidentiality, and Security of *PHI*; however, participation in such training shall not supplant nor relieve *Business Associate* of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

18. Miscellaneous.

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

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

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

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

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

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

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

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

Rev. 05/22/2020

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

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

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

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

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

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

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

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

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

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

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

5. **Non-Discrimination:**

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

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

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

6. **Employees and Independent Contractors:**

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

7. Data Protection and Privacy:

Protected Health Information: Party shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this Agreement. Party shall follow federal and

state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

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

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

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

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

8. Abuse and Neglect of Children and Vulnerable Adults:

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

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

9. Information Technology Systems:

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

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

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

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

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

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

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

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

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

10. Other Provisions:

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

products or tobacco substitutes on the premises of a licensed or registered family child care home while children are

present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

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

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

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

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

ATTACHMENT I

PERMISSION TO PHOTOGRAPH YOUTH
(Residential/Micro Treatment Facilities)

Youth who may be photographed: _____

I hereby request and give permission to _____ (name of program) to photograph _____ (name of youth) solely for the purposes of identification should the youth be absent without leave (on run) from the facility. I further request that an updated photo be taken every six months so that there is a current photo on file in the event that it is needed.

Signed:

Social Worker

Date

Phone

District

STATE OF VERMONT, STANDARD CONTRACT FOR SERVICES
DEPARTMENT FOR CHILDREN AND FAMILIES
STATE OF NEW HAMPSHIRE DEPARTMENT OF HEALTH & HUMAN SERVICES
ATTACHMENT J
NOTIFICATION of CRITICAL INCIDENTS

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CONTRACT #40797

INCIDENTS REQUIRING NOTIFICATION AND DOCUMENTATION I.E. AN "INCIDENT" FORM, HOWEVER NAMED	PARENT (UNLESS CONTRA - INDICATED & SUCH IS DOCUMENTED; REG 203)	DCF DISTRICT SOCIAL WORKER ESP (IF AFTER HOURS)	LOCAL DESIGNATED AGENCY (MH/DS) CASE MANAGER	CRC CONTACT	NH CENTRAL INTAKE UNIT (603) 271-6562	LICENSING AUTHORITY (RLSI)
Death of a resident	X*	X	X	X		
Death of an employee while employee was on duty	X*			X		
Incident requiring immediate medical attention and/or medication	X	X	X	X		
Suicide attempt or mental health crisis that require mental health screening	X	X	X			
Mental Health Screening that results in emergency change in placement	X	X	X	X		
Use of physical restraint and/or seclusion	X	X				
Attempted runaway	X	X				
Runaway (successful) or AWOL	X	X	X	X		
Police intervention that results in charges and/or emergency change in placement	X	X	X	X		
Allegations of physical and/or sexual abuse which occurred at the facility	X	▲		▲	X	
Allegations of physical and/or sexual abuse that occurred other than at the facility	X	X			X	
Sexual activity between residents at the facility or in the care of the facility	X	▲		▲	X	
Medication dispensation errors	X	X				
Potential Media Involvement	X*	X*		X		
Other: See RTP Regulations 120, 125						

* As appropriate to circumstances
▲ Notified via CIU report

Other:

Regulations 120: "A Residential Treatment Program shall immediately, or as soon as reasonable, report to the Licensing Authority incidents that could potentially affect the safety, physical or emotional welfare of children/youth within the program. Written report shall follow verbal report within 24 hours."

Regulation 125: "Residential Treatment Program shall report, verbally and in writing within 24 hours to the Licensing Authority incidents where the program knowingly or negligently violates licensing regulations."

Rev: 2/29/12