DVHA Routing Form

Type of Agreement: **Contract** Agreement #: **20896** Form of Agreement: **New** Amendment #:

Name of Recipient: **Bailit Health Purchasing, LLC** Vendor #: **12256**

Agreement Manager: **Jason Elledge** Phone #: **802-879-5946**

Brief Explanation of Agreement: **State Planning and Establishment of Affordable Care Act's Exchanges**

Start Date: **November 15, 2011** End Date: **March 30, 2012** Maximum Amount: **$205,318.00**

Amendments Only: Maximum Prior Amount: Percentage of Change:

Bid Process (Contracts Only): ☐ Standard ☐ Simplified ☒ Sole Source ☐ Statutory ☐ Master Contract SOW

Funding Source

ACA Exchange 93.525	**$205,318.00**		

Contents of Attached Packet

☒ AA-14
☒ Sole Source Memo
☐ Qualitative/Justification Memo
☒ Attachments A, B, C & F
☐ Attachment D - Modifications to C & F
☒ Attachment E - Business Associate Agreement
☐ Attachment G - Academic Research
☐ MOU
☐ Other:

Reviewer		Reviewer Initials	Date In	Date Out
DVHA Grant & Contract Administrator	**Kate Jones**	KJ	11/3	11/3
DVHA BO	**Jill Gould** [illegible]	JH	11-3	11-3
DVHA Commissioner	**Mark Larson**	ML	11-18	11-18
AHS Attorney General	**Seth Steinzor**	HM (for SS)	11/22	11/22
Following Approvals for Contracts Only:				
AHS CIO	**Angela Rouelle**			
AHS Central Office	**Martha Faber**			
AHS Secretary	**Patrick Flood, Dept Sec**			

Vision Account Codes: **3410010000 22005 507600 41619**

Initials & Date

☐ Subrecipient Module Entry

☐ FFATA Entry

Vision PO #: 3607

STATE OF VERMONT CONTRACT SUMMARY AND CERTIFICATION - - - - - - - - - - - Form AA-14 (10/18/2010)

Note: All sections are required. Incomplete forms will be returned to department.

I. CONTRACT INFORMATION: CHECK ONLY ONE BOX IF APPLICABLE: ☐ ARRA Contract ☑ ACA Contract

Agency/Department: AHS/ DVHA Purchasing **Contract #:** 20896 **Amendment #:**

Vendor Name: Bailit Health ~~Service~~, LLC VISION Vendor No: 12256

Vendor Address: 56 Pickering Street, Needham, MA 02492

Starting Date: ~~11/15/2011~~ 12/23/2011 mg **Ending Date:** 3/30/~~2011~~ 2012 sid **Amendment Date:**

Summary of agreement or amendment: State Planning and Establishment for the Affordable Care Act's Exchanges

II. FINANCIAL INFORMATION

Maximum Payable: $205,318 Prior Maximum: $ Prior Contract # (If Renewal):

Current Amendment: $0 Cumulative amendments: $ 0 % Cumulative Change: 0 %

Business Unit(s): 03410 **VISION Account: 507600**

II. PERFORMANCE INFORMATION

Does this Agreement include Performance Measures tied to Outcomes and/or financial reward/penalties? ☒ Yes ☐ No

Estimated Funding Split:	G-Fund %	S-Fund %	F-Fund 100 %	GC-Fund %	Other %

III. PUBLIC COMPETITION

The agency has taken reasonable steps to control the price of the contract or procurement grant and to allow qualified organizations to compete for the work authorized by this contract. The agency has done this through:

☐ Standard bid or RFP ☐ Simplified Bid ☒ Sole Sourced ☐ Qualification Based Selection ☐ Statutory

IV. TYPE OF AGREEMENT & PERFORMANCE INFORMATION

Check all that apply: ☐ Service ☒ Personal Service ☐ Architect/Engineer ☐ Construction ☐ Marketing ☐ Information Technology ☐ Other, describe:

V. SUITABILITY FOR CONTRACT FOR SERVICE

☒ Yes ☐ No ☐ n/a If this is a Personal Service contract, does this agreement meet all 3 parts of the "ABC" definition of independent contractor? (See Bulletin 3.5) If NO, then contractor must be paid through Payroll

VI. CONFLICT OF INTEREST

By signing below, I certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business.

☐ Yes ☒ No Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this party was selected for improper reasons: (If yes, explain)

VII. PRIOR APPROVALS REQUIRED OR REQUESTED

☒ Yes ☐ No Agreement must be approved by the Attorney General under 3 VSA §311(a)(10) (personal service)

☒ Yes ☐ No I request the Attorney General review this agreement as to form
No, already performed by in-house AAG or counsel: _____ (initial)

☐ Yes ☒ No Agreement must be approved by the Comm. of DII; for IT hardware, software or services and Telecommunications over $100,000

☐ Yes ☒ No Agreement must be approved by the CMO; for Marketing services over $15,000

☐ Yes ☒ No Agreement must be approved by Comm. Human Resources (privatization and retiree contracts)

☒ Yes ☐ No Agreement must be approved by the Secretary of Administration

VIII. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL mg 12/2/11

I have made reasonable inquiry as to the accuracy of the above information:

11/18/11 [signature] 12/6/11 X Patrick Flood

Date Agency / Department Head Date Agency Secretary or Other Department Head (if required)

Nov. 22, 2011 Heidi Moreau N/A

Date Approval by Attorney General Date Approved by Commissioner of Human Resources

N/A 12/13/11 X

Date CIO (initial) Date CMO (initial) Date Secretary of Administration Deputy

REC'D DEC 0 8 2011

VERMONT

Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495
www.dvha.vermont.gov

Agency of Human Services
[phone] 802-879-5900

MEMORANDUM

TO: Jeb Spaulding, Secretary of Administration

THROUGH: Doug Racine, Secretary of Agency of Human Services PF for DR 12/5/11

FROM: Mark Larson; Commissioner, Dept. of Vermont Health Access ML

RE: Sole Source Justification for Bailit Health Purchasing Contract #20896
Duration: ~~11/15/2011~~ 12/23/2011 – 3/30/2012
Value: $205,318

DVHA is requesting to initiate a new contract to extend and expand the work outlined in the recently expired contract with Bailit Health Purchasing. This contract will address an extension of work performed under their recently expired contract with DVHA (#18775) to assist with planning for Vermont's Health Benefits Exchange. DVHA had intended to extend Bailit's contract through an amendment request, however the required federal approval from HHS for such an extension arrived too late for a contract amendment to be executed.

In August of 2010 HHS awarded DVHA an Exchange planning grant for Vermont's Health Benefit Exchange as required under the Patient Protection and Affordable Care Act. The following October, Bailit Health Purchasing was selected through a standard RFP processes to act as a consultant to DVHA and other State partners in exploring the feasibility of an insurance exchange in Vermont and placed under contract. DVHA has been very pleased with the work that Bailit has done for Vermont tied to the Exchange Planning Grant. Given that the work included in this contract is an extension of the prior contract's scope we do not believe it would be in the best interest of the State for DVHA to issue an RFP for the remaining work identified in this contract.

This contract is funded entirely by Federal Financial Funding and complies with all mandatory provisions of AoA Bulletin 3.5. DVHA looks forward to approval of this contract.

APPROVAL: _____ 12/13/11
JEB SPAULDING, SECRETARY OF ADMINISTRATION DATE

Depry

REC'D DEC 0 8 2011

RECEIVED
DEC 21 2011
DEPARTMENT OF VERMONT HEALTH ACCESS

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Bailit health purchasing, LLC , with a principal place of business in Needham, MA (hereafter called "Contractor"). The Contractor's form of business organization is a Corporation. The Contractor's local address is 56 Pickering Street, Needham, MA 02492. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this contract is personal services generally on the subject of State Planning and Establishment for the Affordable Care Act's Exchanges. 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 the Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed $205,318.

4. **Contract Term.** The period of the Contractor's performance shall begin on December 23, 2011 and end on March 30, 2012. The Contractor may invoice for pre-award expenses dating back to October 1, 2011 as approved by the State and as relating to the outlined scope of work.

5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

   Approval by the Attorney General's Office is required.
   Approval by the Secretary of Administration is required.

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

7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 30 days in advance.

8. **Attachments.** This contract consists of 13 pages including the following attachments, which are incorporated herein:
   Attachment A - Specifications of Work to be Performed
   Attachment B - Payment Provisions
   Attachment C - Customary State Contract provisions
   Attachment F - Customary Contract Provisions of the Agency of Human Services

   The order of precedence of documents shall be as follows:
   1). This document
   2). Attachment C
   3). Attachment A
   4). Attachment B
   5) Attachment F

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

BY THE STATE OF VERMONT:		**BY THE CONTRACTOR:**	
	12-22-11	Michael H Bailit	12/18/11
MARK LARSON, COMMISSIONER	DATE	MICHAEL BAILIT, PRESIDENT	DATE
DEPARTMENT OF VERMONT HEALTH ACCESS		BAILIT HEALTH PURCHASING, LLC	

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED

1.0 General Conditions

1.1 This Contract is funded by federal grant funding. All terms of this Contract are subject to any requirements necessary to obtain and maintain such funding. No State funds will be used to fund this Contract.

1.2 Betsy Forrest of the state's health care reform division shall serve as the State's primary contact for this Contract. Beth Waldman shall serve as the Contractor's primary contact for this Contract. Such contacts may be changed by written notice to the other party.

1.3 The State has identified a State Steering Committee ("Steering Committee") for periodic meetings with the Contractor. The purpose of this Steering Committee will be to ensure that various State officials are apprised and consulted regarding planning work. At least monthly meetings will be held with the Steering Committee. Steering Committee meetings may be more often as directed by the State.

1.4 Via written communication signed by both parties, terms of this Contract may be modified as appropriate to reflect changed circumstances, including direction from the Vermont State Legislature, direction from the federal government, and direction from the Governor of Vermont. The State and the Contractor expressly acknowledge that future grant funding may be dependent on the deliverables under this Contract and that, as such, certain deliverables may need to be modified to maximize the likelihood of additional funding.

1.5 The State shall review all draft and final deliverables within 7 working days of receipt by the State and provide feedback to the Contractor as necessary to meet the timelines within this Contract. Where the State is unable to meet this turn-around time for review of drafts, subsequent deliverable due dates will be adjusted based on the date of the State's delivery of written feedback to the Contractor. All deliverables submitted to the State shall be reviewed by the State Contract Manager prior to payment being issued. Payment for any deliverables shall be withheld until verification of acceptance of said deliverable by the State's Contract Manager has been confirmed. Furthermore if any deliverables are not achieved by the expiration of this contract the State has the right to reduce the total maximum contract amount by 10%.

1.6 The State shall assume responsibility for the identification of internal and external stakeholders and for the scheduling of meetings necessary for task completion within all sections.

2.0 Exchange Design

2.1 The Contractor shall produce a final written report analyzing the pros and cons of various exchange design and planning decisions. It is anticipated that such final written report will be largely informed by the legislative process and shall include the on-going analysis and report work which the Contractor has performed throughout this section of the Contract.

3.0 Financial Sustainability Analysis

3.1 The Contractor shall produce the final written analysis for Exchange financial sustainability. Unless directed otherwise by the State, no more than two financing options will be included in the final analysis. Cost estimates, for both upfront costs and ongoing operations, will be presented. The final written analysis shall include state mandated benefits costs. This final analysis shall also include a sustainability model that will show inflows and outflows for pre-implementation (Calendar Year 2013 or other date as appropriate) and the first three years after implementation (Calendar Years 2014-2016 or other date as appropriate).

3.2 The Contractor's final financing options analysis shall include consideration of the additional cost of state-mandated insurance benefits not required by federal law, if any, and the impact such costs would have on financing options. Costs should be estimated for each mandate separately.

4.0 Ad Hoc Exchange Design and Planning Projects

4.1 Organize and develop materials for 3 monthly advisory group meetings (October, November, and December).

4.2 Conduct meetings (4) with small business stakeholders to present Small Business Health Options (SHOP) options.

4.3 Presentations (5) to various groups on the Health Information Exchange.

4.4 Prepare answers to questions from the department of Health and Human Services (HHS) and other organizations regarding the grant application.

4.5 It is anticipated that additional correspondence and presentation project work, not contemplated in the deliverables identified in this Contract, may be necessary as part of the exchange planning and design project. Some of these new deliverables may take the place of current deliverables and some may be additional new deliverables.

4.6 Collect and organize data from the Ombudsman's Office (required by HHS) and work with them on an Affordable Care Act (ACA) implementation plan.

4.7 Sub-contract with Burns & Associates on the Exchange/Basic Health Plan (BHP) modeling & coordination on creating a full Medicaid and Exchange coverage model. Pacific Health Policy Group has been given the assignment to do the modeling of which Medicaid groups will go where under the ACA, and the cost/savings implications, as well as the impact on our Global Commitment waiver.

ATTACHMENT B
PAYMENT PROVISIONS

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for services specified in Attachment A, for services actually performed, up to the maximum allowable amount specified in this agreement. State of Vermont payment terms are Net 30 days from date of invoice, payments against this contract will comply with the State's payment terms. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. Deliverable payment amounts as stated in the scope of work are as follows:

2.1	Exchange Design Final Report	$57,222
3.1	Financial Sustainability Analysis	$30,296
4.1	Advisory Group Meetings	$21,700
4.2	Stakeholder Meetings	$26,040
4.3	Presentations	$10,000
4.4	Question & Answer Memos	$4,680
4.5	Correspondence & Presentations	$21,700
4.6	Ombudsman Office Data Collection	$8,680
4.7	Burns & Associates Sub-contract	$25,000
	Total	**$205,318**

The following provisions specifying payments are:

1. The maximum amount payable under this contract for service and expenses shall not exceed $205,318. All payments are expressly conditioned on the successful delivery of the deliverables described in the referenced section of the contract. It is understood that all necessary expenses required for the Contractor to accomplish a deliverable as described in the Contract are included in the deliverable cost.

2. The Contractor shall submit an invoice on a monthly basis (unless no money is owed) to the State for the deliverable(s) completed. Invoice must include the company name and address, a unique invoice number, dates of service and deliverable(s) completed.

3. If any deliverables are not achieved by the expiration of this contract the State withholds the right to reduce the total maximum contract amount by 10%.

4. All invoices shall be submitted to:
   Jason Elledge
   Department of Vermont Health Access
   312 Hurricane Lane Suite 201
   Williston, VT 05495

ATTACHMENT C
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

1. **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.

2. **Applicable Law.** This Agreement will be governed by the laws of the State of Vermont.

3. **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.

4. **Appropriations:** If appropriations are insufficient to support this Agreement, the State may cancel on a date agreed to by the parties or upon the expiration or reduction of existing appropriation authority. In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to fund this Agreement from State revenues.

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, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

   The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. 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 Party shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Agreement.

   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.

   The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. **Insurance**: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverage is in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Party

for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the 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 Per Occurrence
$1,000,000 General Aggregate
$1,000,000 Products/Completed Operations Aggregate
$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

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: $1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of ***$___N/A___*** per occurrence, and ***$____N/A_____*** aggregate.

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

9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends $500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than $500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a copy of the audit report to the

primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: http://finance.vermont.gov/forms

10. **Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter 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. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

11. **Fair Employment Practices and Americans with Disabilities Act**: Party agrees to comply with the requirement of Title 21V.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. Party further agrees to include this provision in all subcontracts.

12. **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.

13. **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 the 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.

    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.

14. **Child Support**: (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the 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.

15. **Sub-Agreements**: Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

    Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of or reorganization of the Party.

16. **No Gifts or Gratuities**: Party shall not give title or possession of any thing 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.

17. **Copies**: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. **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.

ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.

2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org

3. **Medicaid Program Contractors**:

   Inspection of Records: Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to:

   Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and Inspect and audit any financial records of such Contractor or subcontractor.

   Subcontracting for Medicaid Services: Having a subcontract does not terminate the Contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the Contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the Contractor or subcontractor's performance is inadequate. The Contractor agrees to make available upon request to the Agency of Human Services; the Department of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers.

   Medicaid Notification of Termination Requirements: Any Contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Department of Vermont Health Access, Managed Care Organization enrollee notification requirements.

   Encounter Data: Any Contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

   Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must 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) to support audit compliance with 45CFR95.621 subpart F, *ADP* (Automated Data Processing) *System Security Requirements and Review Process*.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency**. The Contractor agrees to 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, which require that contractors and subcontractors receiving federal funds must assure

that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.

5. **Voter Registration**. When designated by the Secretary of State, the Contractor 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.

6. **Drug Free Workplace Act.** The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.

7. **Privacy and Security Standards.**

   Protected Health Information: The Contractor 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 contract. The Contractor 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: The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

   Other Confidential Consumer Information: The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

   Social Security numbers: The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911(c)(3)).

9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who 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 make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal

law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor 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.

10. **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 Contractor or subcontractor, shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

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

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

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

    The Contractor will ensure the physical and data security associated with computer equipment - including desktops, notebooks, and other portable devices - used in connection with this agreement. The Contractor 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. The Contractor 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, the Contractor shall securely delete data (including archival backups) from the Contractor's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

12. **Computing and Communication:** The Contractor 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 Contractor as part of this agreement. Options include, but are not limited to:

    1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor'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.

The State will not supply e-mail accounts to the Contractor.

13. **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.

14. **Non–discrimination.** The Contractor will prohibit 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, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, 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 and/or federal funds.

    The Contractor will also 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 under Title 9 V.S.A. Chapter 139.

15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

    The law does not apply to children's services provided in private residences; 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.

    Failure to comply with the provisions of the 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.

    Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.