

**SEALED BID**  
**REQUEST FOR PROPOSALS**

**AGENCY OF HUMAN SERVICES**

**Bid Title:**

**EXTERNAL QUALITY REVIEW OF GLOBAL COMMITMENT TO HEALTH WAIVER**

**RFP Issued: November 9, 2015**

**Proposals Due: December 23, 2015**

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## SECTION 1: INTRODUCTION

This document is a request by the Vermont Agency of Human Services (AHS) for proposals from qualified entities to conduct an analysis and evaluation of aggregated information on quality, timeliness, and access to the health care services that the Department of Vermont Health Access (DVHA) furnishes to Medicaid recipients in the state of Vermont as a Managed Care Entity (MCE). AHS is soliciting bids from organizations to perform the External Quality Review of the MCE that meet the specifications in Subpart E-External Quality Review in the CFR 42 § 438.310 through § 438.370 for all activities listed in this Request for Proposal's Scope of Work (Section 3).

RFP guidelines are outlined in Section Two, statement of work to be performed is discussed in Section Three, structure of the proposal is discussed in Section Four, the AHS responsibilities are outlined in Section Five, while the proposal evaluation and selection process are discussed in Section Six.

### 1.1 General Information

For more than two decades, the State of Vermont has been a national leader in making affordable health care coverage available to low-income children and adults, and providing innovative system reforms to support enrollee choice and improved outcomes. Vermont was among the first states to expand coverage for children and pregnant women, accomplished in 1989 through the implementation of the state-funded Dr. Dynasaur program, which later in 1992 became part of the state-federal Medicaid program. When the federal government introduced the Children's Health Insurance Program (CHIP) in 1997, Vermont extended coverage to uninsured and under-insured children living in households with incomes below 300% of the Federal Poverty Level (FPL). Effective January 1, 2014, Vermont incorporated the CHIP program into its Medicaid State Plan, with the upper income limit expanded to 312% FPL (the MAGI-converted income limit).

In 1995, Vermont implemented a Section 1115(a) Demonstration, the Vermont Health Access Plan (VHAP). The primary goal was to expand access to comprehensive health care coverage through enrollment in managed care for uninsured adults with household incomes below 150% (later raised to 185% of the FPL for parents and caretaker relatives with dependent children in the home). VHAP also included a prescription drug benefit for low-income Medicare beneficiaries who did not otherwise qualify for Medicaid. Both Demonstration populations paid a modest premium on a sliding scale based on household income. The VHAP waiver also included a provision recognizing a public managed care framework for the provision of services to persons who have a serious and persistent mental illness, through Vermont's Community Rehabilitation and Treatment program.

While making progress in addressing the coverage needs of the uninsured through Dr. Dynasaur and VHAP, by 2004 it became apparent that Vermont's achievements were being jeopardized by the ever-escalating cost and complexity of the Medicaid program. Recognizing that it could not spend its way out of projected deficits, Vermont worked in partnership with CMS to develop two new innovative 1115 demonstration waiver programs, Global Commitment to Health (GC) and Choices for Care (CFC). As explained in more detail below, the GC and CFC Demonstrations have enabled the state to preserve and expand the affordable coverage gains made in the prior decade, provide program flexibility to more effectively deliver and manage public resources, and improve the health care system for all Vermonters.

## 1.2 Vermont 1115 Waivers (October 2005 – January 2015)

### Global Commitment to Health

The Global Commitment to Health Section 1115(a) demonstration was initiated in September 2005, and is designed to use a multi-disciplinary approach including the basic principles of public health, the fundamentals of effective administration of a Medicaid managed care delivery system, public-private partnership, and program flexibility. The demonstration continued VHAP and provided flexibility with regard to the financing and delivery of health care to promote access, improve quality, and control program costs. The majority of Vermont's Medicaid program operated under the GC Demonstration, with the exception of Vermont's Disproportionate Share Hospital (DSH) program. The GC Demonstration was designed to test the hypothesis that greater program flexibility in the use of Medicaid resources and the lessening of federal restrictions on Medicaid services would permit the State to better meet the needs of Vermont's uninsured, underinsured and Medicaid beneficiaries for the same or lower cost. Specifically, the GC Demonstration aims to: 1) promote access to affordable health coverage, 2) develop public health approaches for meeting the needs of individuals and families, 3) develop innovative, outcome- and quality-focused payment approaches, 4) enhance coordination of care across health care providers and service delivery systems, and 5) control program cost growth. Since 2015, the following amendments have been made to the GC demonstration:

- 2007: a component of the Catamount Health program was added, enabling the state to provide a premium subsidy to Vermonters who had been without health insurance coverage for a year or more, have income at or below 200 percent of the FPL, and who do not have access to cost effective employer-sponsored insurance, as determined by the state.
- 2009: the state extended Catamount Health coverage to Vermonters at or below 300 percent of the FPL.
- 2011: inclusion of a palliative care program for children who are at or below 300 percent of the FPL and have been diagnosed with life limiting illnesses that would preclude them from reaching adulthood. This program allows children to receive curative and palliative care services such as expressive therapy, care coordination, family training and respite for caregivers.
- 2012: CMS provided authority for the state to eliminate the \$75 inpatient admission copay and to implement nominal co-payments for the Vermont Health Access Plan (VHAP) as articulated in the Medicaid state plan.
- 2013: CMS approved the extension of the GC demonstration which included sun-setting the authorities for most of the 1115 Expansion Populations because they would be eligible for Marketplace coverage beginning January 1, 2014. The renewal also added the New Adult Group to the demonstration effective January 1, 2014. Finally, the renewal also included premium subsidies for individuals enrolled in a qualified health plan whose income is at or below 300 percent of the FPL.

### Choices for Care

Vermont's Choices for Care Section 1115(a) Demonstration, implemented on October 1, 2005, and renewed through September 30, 2015, addressed consumer choice and funding equity for low-

income seniors and people with disabilities by providing an entitlement to both home- and community-based services (HCBS) and nursing home care. Vermont was the first state to create such a program and the first state to commit to a global cap (\$1.2 billion over five years) on federal financing for long-term care services. Vermont's overarching goal for Choices for Care is to support individual choice, thus improving access to HCBS. In supporting more people in their own homes and communities, Vermont has sought to increase the range and capacity of HCBS. As stated above, on January 30, 2015, Vermont received approval from CMS to consolidate its Global Commitment and Choices for Care 1115 Demonstrations.

### **1.3 Current Vermont 1115 Waiver (January 30, 2015 – present)**

#### Global Commitment to Health

On January 30, 2015, Vermont received approval from CMS to consolidate its Global Commitment and Choices for Care 1115 Demonstrations. The GC Demonstration was designed to test the hypothesis that greater program flexibility in the use of Medicaid resources and the lessening of federal restrictions on Medicaid services would permit the State to better meet the needs of Vermont's uninsured, underinsured and Medicaid beneficiaries for the same or lower cost. Specifically, the GC Demonstration aims to: 1) increase access to affordable and high-quality health care, 2) improve access to primary care, 3) improve the health care delivery for individuals with chronic care needs, 4) contain health care costs, and 5) allow beneficiaries a choice in long-term services and supports and provide an array of home- and community-based alternatives recognized to be more cost-effective than institutional-based supports.

### **1.4 Medicaid in Vermont**

The Medicaid program in Vermont provides medical assistance to approximately 205,579 clients, representing public health insurance programs for nearly one-in-three Vermonters. Other information regarding the Medicaid Program can be found at the DVHA/Green Mountain Care website: [http://www.greenmountaincare.org/health\\_plans/medicaid](http://www.greenmountaincare.org/health_plans/medicaid)

#### **1.4.1 Summary of Medicaid Operations**

According to the GC's Special Terms and Conditions (STCs), Vermont operates its managed care model in accordance with federal managed care regulations found at 42 CFR 438. The Agency of Human Services (AHS), as Vermont's Single State Medicaid Agency, is responsible for oversight of the managed care model. The Department of Vermont Health Access (DVHA) operates the Medicaid program as if it were a Managed Care Organization in accordance with federal managed care regulations. Program requirements and responsibilities are delineated in an inter-governmental agreement (IGA) between AHS and DVHA. CMS reviews the IGA annually to ensure compliance with the Medicaid managed care model and the Demonstration Special Terms and Conditions. DVHA also has sub-agreements with the other state entities that provide specialty care for GC enrollees (e.g., mental health services, developmental disability services, and specialized child and family services). As such, since the inception of the GC Demonstration, DVHA and its IGA partners have modified operations to meet Medicaid managed care requirements, including requirements related to network adequacy, access to care, beneficiary information, grievances, quality assurance, and quality improvement.

#### **1.4.1.1 General**

The budget neutrality ceiling agreed to in the terms and conditions of the 1115 waiver for the Vermont Medicaid program budget is \$4.7 billion over the course of the five-year waiver. Approximately 60% of this money comes from the Federal sources and approximately 40% comes from the state general fund. The DVHA has over 100 employees in its Williston, Vermont location.

Under the *Global Commitment to Health*, the State of Vermont is adopting a health care financing and delivery model that addresses the complex and varying needs of its beneficiaries and which can be modified quickly in response to changing demographic and economic circumstances. To operate this model, DVHA is adopting several approaches including directly administering programs, adopting intergovernmental agreements with AHS Departments/Divisions that either provide direct services to the Medicaid population or contract with community based service providers throughout the state.

Under the current waiver structure, the State has agreed to an aggregate budget neutrality limit. In addition, total annual funding for medical assistance is limited based on an actuarially determined, per member per month limits. AHS uses prospectively derived actuarial rates for the waiver year to draw federal funds and pay DVHA a per member per month (PMPM). This capitation payment reflects the monthly need for federal funds based on estimated GC expenditures. On a quarterly basis, AHS reconciles the federal claims from the underlying GC expenditures on the CMS-64 filing. As such, Vermont's payment mechanisms function similarly to those used by state Medicaid agencies that contract with private managed care organizations to manage some or all of the Medicaid benefits.

#### **1.4.1.2 Eligibility**

All individuals eligible for the State of Vermont's public insurance programs, excluding the following persons:

- Unqualified aliens and qualified aliens subject to the State Plan and Special Terms and Conditions.

will be enrolled in the *Global Commitment to Health Waiver*. Eligibility and enrollment are therefore synonymous for the purpose of this IGA.

DVHA shall be responsible for verification of the current status of an individual's Medicaid eligibility with the Economic Services Division (ESD), within AHS Department for Children and Families (DCF), which makes these eligibility determinations.

DVHA and its IGA partners shall not discriminate, or use any policy or practice that has the effect of discriminating, against any individual's eligibility to enroll on the basis of race, color, religion, disability, sexual orientation or national origin. DVHA, the delegated AHS departments and providers will accept and serve all individuals eligible for, and enrolled in, the *Global Commitment to Health Waiver*.

#### **1.4.1.3 Services**

The *Global Commitment to Health Waiver* includes a comprehensive health care services benefit

package. The covered services will include all services that AHS requires be made available through its public insurance programs to enrollees in the *Global Commitment to Health Waiver* including all State of Vermont plan services in the following categories:

- Acute health care services
- Preventative health services
- Behavioral health services, including substance abuse treatment
- Specialized mental health services for adults and children
- Long-Term Services and Supports for adults under the Choices for Care Program;
- Developmental disability services;
- Traumatic Brain Injury;
- Rehabilitation Services for adults;
- Pharmacy services
- School-based services

#### **1.4.1.4 Service Delivery**

The State contracts with the public Managed Care Entity, DVHA, to provide care for clients at an established premium rate. The public MCE operates through intergovernmental agreements with AHS Departments, Divisions and community partners, and contracts with vendors for the provision of care and operation and administration of the program. Medical services are provided using Fee-for-Service and Primary Care Case Management (PCCM) models. The Primary Care Case Management program is known as *Primary Care Plus*. Primary care physicians participating in *Primary Care Plus* receive a monthly case management fee in addition to their regular reimbursement. The MCE contracts with a network administrator who manages the provider contracts, an enrollment broker, a pharmacy benefit manager, and a disease management contractor.

## SECTION 2: RFP GUIDELINES

### 2.1 ADMINISTRATION OF RFP

#### 2.1.1 Issuing Agency

This request for Proposals is being issued by the State of Vermont, Agency of Human Services.

#### 2.1.2 Point of Contact

All questions regarding this RFP should be submitted or directed to:

Shawn Skaflestad, Quality Improvement Manager  
Agency of Human Services  
208 Hurricane Lane  
Williston, VT 05495  
Telephone: (802) 871-3008  
E-mail: shawn.skaflestad@vermont.gov

The AHS is the primary point of contact for all bidders from the date of release of the RFP until the contract is fully executed and signed. Any attempt by a bidder to contact any State employees regarding this procurement, other than under those conditions identified in Subsection 2.3.1, may cause rejection of a bid submitted by that party.

#### 2.1.3 Reference Documents

In addition to the Request for Proposal for the External Quality Review of Global Commitment to Health Care, numerous reference documents have been assembled for review.

The following reference materials pertain to the State of Vermont *Global Commitment to Health Care* program agreements and administration:

- Vermont 1115 Consolidation Amendment Approval
- Comprehensive Quality Strategy – Submitted to CMS on September 15, 2015
- Draft Demonstration Evaluation Design – Revised September 4, 2015

The aforementioned reference document materials are available through the following web site:

<http://dvha.vermont.gov/administration>

Specific CMS documents establish out the protocols for the External Quality Review:

- Implementation of Performance Improvement Projects (PIPs), Version 2.0, September 1, 2012
- Validation of Performance Improvement Projects (PIPs), Version 2.0, September 1, 2012
- Assessment of Compliance with Medicaid Managed Care Regulations, Version 2.0, September 1, 2012
- Validation of Measures Reported by the MCO, Version 2.0, September 1, 2012
- Calculation of Performance Measures, Version 2.0, September 1, 2012

- Information Systems Capabilities Assessment (ISCA), Version 2.0, September 1, 2012
- Validation of Encounter Data Reported by the MCO, Version 2.0, September 1, 2012
- Validation and Implementation of Surveys, Version 2.0, September 1, 2012
- Focused Studies, Version 2.0, September 1, 2012

The aforementioned reference document materials are available through the following web site:  
<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Quality-of-Care/Quality-of-Care-External-Quality-Review.html>

All possible effort has been made to ensure that the reference materials are complete and current. However, the State of Vermont does not warrant that the information is, indeed, complete or current at the time of the viewing. The requirements specified in this RFP shall take precedence over any conflicting reference documentation materials.

## **2.2 PROCUREMENT PROCESS**

### **2.2.1 Legal Basis**

The procurement process for this RFP will be conducted in accordance with the Federal regulations contained in 45 CFR 74, and applicable procurement policies and procedures established by the State.

### **2.2.2 RFP Issuance and Amendments**

The State reserves the right to amend the RFP at any time prior to the proposal due date by issuing written addenda. Answers to questions will be considered an addendum to the RFP.

### **2.2.3 Procurement Protest**

Any party who contends to be adversely affected by the RFP or the rules of procurement must file a written notice of protest with the State within five (5) business days of the mailing of the State's responses to bidders' questions. A decision shall be rendered by the Secretary of the Agency of Human Services (or designee) by the end of the 10th business day from receipt of this notice under normal and usual conditions.

### **2.2.4 Proposal Amendments and Rules for Withdrawal**

Bidders are allowed to make amendments to their proposals if the change is submitted by the proposal due date following the conditions outlined in Subsection 4.1. The submission should be clearly labeled as "Amendment to Proposal". The State will not accept any amendments, revisions, or alterations to proposals after the proposal due date.

Prior to the proposal due date, a submitted proposal may be withdrawn by submitting a written request to the AHS for its withdrawal that is signed by the bidder's authorized agent.

### **2.2.5 Acceptance of Proposals**

The State will accept receipt of all proposals properly submitted. After receipt of proposals, the State reserves the right to sign a contract, without negotiation, based on the terms, conditions, and premises of the RFP and the proposal of the selected bidder. Proposals must be responsive to all requirements in the RFP in order to be considered for contract award. The proposal and its conditions must remain valid for six (6) months from the date of proposal submission.

The State reserves the right to waive minor irregularities in proposals, providing such action is in the best interest of the state. Such waiver shall in no way modify the RFP requirements or excuse the bidder from full compliance with RFP specifications and other contract requirements if the bidder is awarded the contract.

The State also reserves the right to request proposal clarification or correction, reject any or all proposals received, or cancel the RFP, according to the best interest of the State.

### **2.2.6 Contract Award Notice**

Unsuccessful bidders will be notified by mail upon the completion of contract negotiation with the successful bidder.

### **2.2.7 Bidder Debriefing**

Unsuccessful bidders may request a meeting for debriefing and discussion of their proposal. Request for debriefing should be in writing to AHS Point of Contact within thirty (30) days of receipt of the notice of a successful bidder. The debriefing will not include any comparisons of unsuccessful proposals. Debriefings will not be held until after the contract is signed and approval of the contract is received from all appropriate State and Federal agencies.

## **2.3 RULES OF PROCUREMENT**

The rules in the following subsections have been established to facilitate procurement.

### **2.3.1 Restrictions on Communications with State Staff**

From the issue date of this RFP until a Contractor is selected and the selection is announced, bidders are not allowed to communicate with any State staff, or the MCE contractors, regarding this procurement, except:

- AHS Point of Contact person named in Subsection 2.1.2,
- State staff during the Bidders Conference.

The State shall reserve the right to reject the proposal if this provision is violated.

### **2.3.2 Cost of Preparing Proposals**

All costs incurred by the bidders during the preparation of their proposals and for other procurement-related activities will be the sole responsibility of the bidders. The State will not reimburse the bidders for any such costs.

### **2.3.3 Vermont Tax ID Number**

A Vermont business account tax number is required for the Contractors if the Contractor is a corporation or if the Contractor, under whatever form of business, has employees who are subject to Federal income tax withholding and who perform their services within the State of Vermont. Contracts cannot be executed without a Vermont Tax ID.

### **2.3.4 Disposition of Proposals & Proprietary Material**

The successful proposal will be incorporated into the resulting contract and will be a matter of public record.

All material submitted by bidders becomes the property of the State of Vermont, which is under no obligation to return any material submitted by a bidder in response to this RFP. The State shall have the right to use all systems concepts, or adaptations of those ideas, contained in any proposal, and this right will not be affected by selection or rejection of the proposal.

### **2.3.5 Freedom of Information and Privacy Act**

Bidders should be aware that all materials associated with the procurement are subject to the terms of the Freedom of Information Act and Vermont's Access to Public Records laws, the Privacy Act, and all rules, regulations, and interpretations of these Acts, including those from the offices of the Attorney General of the United States, Health and Human Services, Centers for Medicare and Medicaid Services, and the State of Vermont.

By submission of a proposal, the bidder agrees that the Privacy Act of 1974, Public Law 93-579, and the Regulations and General Instructions issued pursuant thereto, are applicable to this contract, and to all subcontracts hereunder.

If the proposal includes material which is considered by the bidder to be proprietary and confidential under Vermont law (**1 VSA, Chapter 5, § 316 - 320**), the bidder shall clearly designate the material as such, explaining why such material should be considered confidential.

The bidder must identify each page or section of the proposal that it believes is proprietary and confidential with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the bidder if the identified material were to be released.

### 2.3.6 Use of Subcontractors

The prime Contractor will be responsible for all the work to be performed under this contract. Bidders must identify proposed subcontractors in their proposals. At minimum, the identification shall include name address and scope of work to be performed by such subcontractors and the estimated percentage of the total work effort included in each subcontract without reference to price.

### 2.3.7 Utilization of Small Business, Minority, and Woman-Owned Concerns

The State of Vermont and the Agency of Human Services attempt to ensure that a fair portion of the purchases and contracts for supplies and services for the government is placed with small business concerns. By the submission of a proposal, the bidder shall agree to accomplish the maximum amount of subcontracting to small business, minority, and woman-owned concerns, consistent with the efficient performance of this contract.

## 2.4 Procurement Activities

### 2.4.1 Procurement Schedule

The following timetable lists the key activities within the procurement process:

RFP Issued	November 9, 2015
Submission of Letter of Intent to Bid	November 23, 2015, 4:00 PM EST
Closing date for submission of written questions	November 23, 2015, 4:00 PM EST
Bidders' Conference to review written questions <i>Secretary's Conference Room, 208 Hurricane Lane, Williston, Vermont 05495</i>	November 30, 2015, 2:00 PM EST
Responses to written questions posted	December 7, 2015
Closing Date for receipt of proposals	December 23, 2015, 4:00 PM EST
Public Bid Opening <i>Secretary's Conference Room, 208 Hurricane Lane, Williston, Vermont 05495</i>	December 24, 2015 at 10:00 AM EST
Proposal Evaluation Process	December 28, 2015 – Jan 8, 2016
Oral Presentations, If Required	December 28, 2015 – Jan 8, 2016
Notify Apparently Successful Bidder	January 11, 2016
Process of Contract Review and Approvals	January 11, 2016 – February 4, 2016
Final Contract Completion	February 5, 2016
Notify Unsuccessful Bidders	February 12, 2016
Contract Begin Date	February 15, 2016

### 2.4.2 Letter of Intent to Bid

AHS will only accept bids from vendors who submit a Letter of Intent to Bid on the AHS External Quality Review RFP. Letters should include the Bid Title and Project Manager’s name, and if the vendor is under contract as a PRO or has been deemed PRO-like by CMS. Only those prospective bidders who have submitted a letter of intent will receive subsequent mailings related to the RFP.

**Letters of Intent to Bid must be received on November 23, 2015, 4:00 PM EST.**

Vendors should retain any form of confirmation that the letter was delivered prior to November 23, 2015, 4:00 PM EST. The method of delivery is at the discretion of the bidder and is at the bidders risk as to timeliness and compliance.

Letters of Intent to Bid shall be:

**Mailed to:**

Shawn Skaflestad  
EQRO RFP  
Agency of Human Services  
208 Hurricane Lane  
Williston, VT 05495

**Delivered to:**

Shawn Skaflestad  
EQRO RFP  
Agency of Human Services  
208 Hurricane Lane  
Williston, VT 05495

### 2.4.3 Bidders Conference

The bidder’s conference will be held in the following location:

AHS Secretary’s Conference Room  
Agency of Human Services  
208 Hurricane Lane  
Williston, VT 05495

Each prospective bidder may bring up to three (3) representatives to the conference. Prospective bidders may also participate via telephone in the conference. Interested parties should notify the AHS Point of Contact person regarding attendance or participation via phone.

Prospective bidders will have an opportunity to receive answers to written questions submitted in advance and to ask additional questions with regard to this RFP at a bidders’ conference. The State reserves the right to defer immediate answers on any question not submitted in advance in writing and/or to decline questions. Answers to questions that were received in writing or discussed in the bidders’ conference will be posted on the AHS web site by December 7, 2015.

#### **2.4.4 Submission of Proposals**

AHS will only accept proposals from vendors who submit a Letter of Intent to Bid on the AHS External Quality Review RFP.

**Proposals must be received on** November 23, 2015, 4:00 PM EST.

No exceptions will be made for late proposals. Proposals submitted after the deadline will be returned to the bidder. The method of delivery is at the discretion of the bidder and is at the bidder's risk, with respect to timeliness and compliance.

**NO FAXED PROPOSALS WILL BE ACCEPTED.** Proposals shall be:

**Mailed to:**

Shawn Skaflestad  
EQRO RFP  
Agency of Human Services  
208 Hurricane Lane  
Williston, VT 05495

**Delivered to:**

Shawn Skaflestad  
EQRO RFP  
Agency of Human Services  
208 Hurricane Lane  
Williston, VT 05495

AHS reserves the right to accept or reject any or all bids. AHS will not entertain proposals from an organization that performs other functions with respect to Medicaid covered individuals where performance of the organization's functions with Medicaid individuals would conflict with the Quality Review functions. All proposals become the property of the State of Vermont and will be a matter of public record after a contract has been awarded.

#### **2.4.5 Public Bid Opening**

A public bid opening will be held on December 24, 2015 at 10:00 AM EST in the AHS Secretary's conference room. At this opening, the name, address, and the amount of the bid for each proposal will be read. No additional information will be provided at this opening.

Bidders interested in attending the public bid opening should contact the AHS Point of Contact person.

## **SECTION 3: STATEMENT OF WORK TO BE PERFORMED**

### **3.1 External Quality Review**

This Request for Proposals (RFP) seeks responses from individuals or organizations to provide external quality review and utilization review activities that will enable AHS to comply with federal External Quality Review (EQR) requirements issued as part of the final rule for Part 438 – Managed Care as described in 42 CFR Chapter IV (10-1-05 Edition).

#### **3.1.1 Expectations**

EQRO program requirements are linked to the federal requirement for adherence to specific quality of care and service standards as well as compliance with State and federal regulations. An EQRO bidder must be a QIO or meet the requirements for a QIO in accordance with 42 CFR §431.630 (Medicaid QIO Regulation). CMS requires the State to contract with an entity that is external to and independent of the state to perform an annual review of Medicaid managed care projects.

The review will provide an external assessment of the quality of health care delivered to Medicaid managed care enrollees. The external review will be focused on the MCE programs, operated by the DVHA, through its Inter-Governmental Agreements (IGAs) with AHS Departments/Divisions and a network of community-based providers.

The goal of the External Quality Review is to review services provided by Medicaid managed care enrollees, specifically to:

- Determine whether the care conforms to professionally accepted standards for quality, quantity, timeliness, and appropriateness of the treatment setting.
- Assist AHS and the MCE in designing interventions when opportunities for improvement are identified.

### **3.2 Components of the Scope of Work**

#### **3.2.1 Mandatory EQR Activities**

The Contractor shall perform the following mandatory activities, or additional activities added at some later date:

- Validation of state-required performance improvement projects
- Validation of state-required performance measures
- Review of MCE compliance with state-specified standards for quality program operations

The EQRO will also be required to submit an annual technical report to AHS which will be used to guide quality assessment and improvement efforts. The annual report will:

- Assess the MCE's strengths and weaknesses with respect to quality, timeliness and access to health care services

- Provide recommendations for improving quality of programs/services and care furnished by the MCE and
- Evaluate the implementation and effectiveness of the Quality Strategy

The EQRO may also be asked to provide technical assistance to DVHA Quality Improvement staff in their efforts to fulfill quality of care obligations with the State.

When carrying out the activities in the scope of work, or additional activities added at some later date, the bidder will follow protocols established by CMS, or follow a methodology approved by AHS in compliance with those protocols, using CMS protocols (as defined in 42 C.F.R. 438.360). These protocols provide guidance when undertaking the mandatory and optional tasks associated with the external review. Included are protocols for conducting focused studies, validating performance measures, calculating performance measures, validating performance improvement projects and validating encounter data.

CMS Protocol documents:

- Implementation of Performance Improvement Projects (PIPs), Version 2.0, September 1, 2012
- Validation of Performance Improvement Projects (PIPs), Version 2.0, September 1, 2012
- Assessment of Compliance with Medicaid Managed Care Regulations, Version 2.0, September 1, 2012
- Validation of Measures Reported by the MCO, Version 2.0, September 1, 2012
- Calculation of Performance Measures, Version 2.0, September 1, 2012
- Information Systems Capabilities Assessment (ISCA), Version 2.0, September 1, 2012
- Validation of Encounter Data Reported by the MCO, Version 2.0, September 1, 2012
- Validation and Implementation of Surveys, Version 2.0, September 1, 2012
- Focused Studies, Version 2.0, September 1, 2012

The specifications for deliverables required under this RFP may be revised each year in response to program changes, MCE participation, and enrollment levels. The EQRO Contract for external quality review activities encompasses the time period February 15, 2016 through January 14, 2018. ***EQRO Activities for Year 1 will be released at the EQRO Bidders Conference on November 30, 2015. Year 2 activities will be established by October 1, 2016.*** The Contract may be extended at the sole discretion of the State for an additional one-year or two-year period.

During the length of the contract, work requests may be made of the Contractor(s) at the sole discretion of AHS if state, federal or grant funding becomes available for optional activities described in 42 CFR 438.358(c) or comparable activities that assess the quality of care or provide for the control of utilization of programs through the *Global Commitment to Health* initiative. AHS also reserves the right to seek other qualified entities to conduct such work.

Federal and state statutory and regulatory provisions and funding limitations may demand modifications. At any point during the EQRO contract, contract managers from AHS may request, through a mutual agreement with the selected Bidder(s), modifications to the scope of work prior to implementation of a specific element in the scope of work.

### **3.2.1.1 Validation of Performance Improvement Projects**

In response to the Balanced Budget Act of 1997 (BBA), the Centers for Medicare and Medicaid Services (CMS) have released a set of protocols for external quality review of Medicaid and Medicare managed care plans. As part of the EQRO, AHS is implementing the validation of the State-required performance improvement projects on an annual basis. The EQRO will validate a minimum of two performance improvement project per year, as selected by AHS which may be initiated, underway but not completed, or completed during the reporting year.

#### **Deliverables for 3.2.1.1**

The EQRO will provide AHS with a final written report in Year 1 of the contract. The written report should describe all activities included in the Validation of Performance Improvement Projects (PIPs), Version 2.0, September 1, 2012 protocol including the following: 1) assessing the MCE’s methodology for conducting the PIP, 2) verifying actual PIP study findings, and 3) evaluating overall validity and reliability of study results.

*Assessing the MCO’s / PIHP’s Methodology for Conducting the PIP*, involves ten steps:

1. Review the selected study topic(s)
2. Review the study question(s)
3. Review the identified study population
4. Review selected study indicators
5. Review sampling methods
6. Review the data collection procedures
7. Review data analysis and interpretation of study results
8. Assess the MCO’s improvement strategies
9. Assess the likelihood that reported improvement is “real” improvement
10. Assess sustainability of the documented improvement

All deliverables must be provided in hard copy and electronic format. The State shall retain ownership of all contract deliverables, and unlimited rights to use, disclose, or duplicate all deliverables.

### **3.2.1.2 Validation of State-Required Performance Measures**

The external quality review organization (EQRO) will be required to:

1. Evaluate the accuracy of Medicaid performance measures reported by, or on behalf of, the Managed Care Entity (MCE), and
2. Determine the extent to which Medicaid-specific performance measures calculated by an MCE (or by entity acting on behalf of an MCE) followed specifications established by the State Medicaid agency (AHS) for the calculation of the performance measure(s).

#### Quality Measurement

AHS has required that performance measures be calculated by MCE; provided specifications to be

followed in calculating these measures; and identified the manner and mechanisms for reporting these measures. AHS requires that the MCE report on approximately ten to fifteen performance measures per year as determined by AHS. These indicators consist of measures of quality, access, or utilization. The quality measures may encompass preventive health services, prenatal care, acute and chronic conditions, long term services and supports, and behavioral health. For Year One, performance measures will be derived from the Health Employer Data Information Set (HEDIS®). In future years, measurements may be broader in scope, to include HEDIS® and “HEDIS®-like” measures will be included to reflect the issues associated with the unique nature of Vermont State’s Medicaid population.

Specific tasks involved in this activity include the following:

- Review of the data management processes of the MCE,
- Evaluation of algorithmic compliance (the translation of captured data into actual statistics) with specifications defined by AHS,
- Verification of either the entire set or a sample of the AHS-specified performance measures to confirm that the reported results are based on accurate source information.
- Provide technical assistance to the MCE in submitting quality data.

The EQRO will be required to validate data reported by the MCE on an annual basis. AHS perceives the development of quality performance measures as an evolving process. The performance measures are refined annually in an attempt to develop a core set of reliable and valid quality measures. The selected bidder will assist AHS by preparing a set of measure specifications to be used by the MCE and updating the data submission tool to reflect each year’s data collection requirements.

### **Deliverable for 3.2.1.2**

Completion of Validation of Measures Reported by the MCO, Version 2.0, September 1, 2012 protocol to include review of the data management processes of the MCE, evaluation of algorithmic compliance (the translation of captured data into actual statistics) with specifications defined by the State, and verification of a sample of the State-specified performance measures to confirm that the reported results are based on accurate source information for data collected during the preceding 12 months to comply with requirements set forth in 438.240(b)(2). The contractor will perform a limited number of pre-onsite, MCE onsite, and post site visit activities and worksheets per the protocol. In addition, the contractor will submit all worksheets in Attachments I-XV of the protocol to AHS. The written report should include a description of the project and methodology, a review of standards and data sources, and recommendations for data collection and analysis.

All deliverables must be provided in hard copy and electronic format. AHS shall retain ownership of all contract deliverables, and unlimited rights to use, disclose, or duplicate all deliverables.

### **3.2.1.3 Review of MCE compliance with State-specified standards for quality program operations**

The Contractor will utilize protocols in “Assessment of Compliance with Medicaid Managed Care

Regulations,” Version 2.0, September 1, 2012 protocol to include review of the MCE’s documents and interviews with staff to determine their compliance with the federal regulations and state contract requirements for quality, timeliness of, and access to care and services provided to Medicaid enrollees by the MCE. AHS will select one set of standards (i.e., access, structure and operations, or measurement and improvement) per year to be evaluated. Specific activities may include the following:

- Planning for compliance monitoring activities
- Obtaining background information from the State AHS or DVHA
- Document review
- Conducting interviews
- Collecting any other accessory information (e.g., from site visits)
- Analyzing and compiling findings
- Reporting results to AHS

### **Deliverables for 3.2.1.3**

The Contractor will complete and submit to AHS all activities and worksheets included in the protocol. All deliverables must be provided in hard copy and electronic format. The State shall retain ownership of all contract deliverables, and unlimited rights to use, disclose, or duplicate all deliverables. The entity responsible for the evaluation shall complete a narrative summary of reviewer findings as documented on the documentation and reporting tool (summary of the information contained in the documentation and reporting tool) with simple analysis, such as the total number of regulatory provisions with a status of *Met*, *Partially Met*, and *Not Met*. Regulatory provision compliance determinations and decisions shall rest with AHS.

### **3.2.1.4 Other Activities**

#### **Technical Report**

The EQRO must provide AHS with a detailed technical report that describes the manner in which the data from all activities conducted in accordance with § 438.358 were aggregated and analyzed, and conclusions were drawn as to the quality, timeliness, and access to the care furnished by the MCE. The report must also include the following for each activity conducted in accordance with § 438.358:

- (i) Objectives.
- (ii) Technical methods of data collection and analysis.
- (iii) Description of data obtained.
- (iv) Conclusions drawn from the data.

This report shall include separate chapters for each of the mandatory activities, referencing each of the components listed in the scope of work as well as contain the following:

- An assessment of the MCE’s strengths and weaknesses with respect to the quality, timeliness, and access to health care services furnished to Medicaid recipients

- Recommendations for improving the quality of health care services furnished by the MCE, and
- An assessment of the degree to which the MCE has addressed effectively the recommendations for quality improvement made by the EQRO during the previous year's EQR.

The Contractor shall:

1. Submit the annual technical report to AHS by the 15<sup>th</sup> of the month following the end of each contract year.
2. Coordinate with designated AHS managers throughout the design, development, and finalization of all Technical Reports and other deliverables.
3. Ensure that all final Technical Reports and other deliverables are well written, accurate, and complete.
4. Provide in hard copy and electronic formats that are acceptable to AHS. The state shall retain ownership of all contract deliverables, and unlimited rights to use, disclose, or duplicate all deliverables.
5. Upon request by AHS, provide all final Technical Reports and other deliverables in alternative formats including, but not limited to, large font.
6. Not disclose any information or results contained in Technical Reports or other deliverables to any individual or entity without the prior written approval of AHS.

### **Communications and Meetings**

The Contractor shall:

- A. Meet with AHS, for regular meetings or as often as AHS requests, to discuss process, progress, barriers, and any other related issues proposed by AHS or the Contractor related to EQR activities. If agreed upon in advance by AHS, specific meetings may take place via telephone or video-conferencing.
- B. Designate appropriate staff to meet with AHS staff.
- C. Provide the agenda for and facilitate meetings with AHS staff.
- D. Take notes during meetings and distribute these notes to AHS staff.
- E. If requested by AHS, following the submission of any final Technical Report or other deliverable to AHS, provide an oral presentation to AHS or the MCE regarding its review and any recommendations.
- F. If requested by AHS, assist AHS in responding to any questions from the Center for Medicare and Medicaid Services (CMS), the MCE, or other stakeholder, about any final Technical Report or deliverable.

## **SECTION 4: STRUCTURE OF PROPOSAL**

### **4.1 General Submission Requirements**

The bidder must provide four (4) hard copies of the proposal and 1 CD with electronic version of the proposal in a sealed package marked "AHS External Quality Review RFP". Proposals in hardcopy shall be on 8½ by 11 inch paper with margins of at least ¾ inch, and font sizes must be 11 point or greater. One full set of the hardcopy Proposal should be clearly marked “original”. The proposal marked “original” should include the required signed documents in section 4.2.1. **NO FAXED PROPOSALS WILL BE ACCEPTED.**

### **4.2 Proposal Organization & Requirements**

Proposals shall be divided in the following sections:

- Section 1: Original Signed Documents
- Section 2: Table of Contents
- Section 3: Executive Summary
- Section 4: Corporate Background and Experience
- Section 5: References
- Section 6: Responses to Questions
- Section 7: Work Plan
- Section 8: Cost Proposal

#### **4.2.1 Required Signed Documents – Transmittal Letter**

The bidder must provide a ‘Transmittal Letter’ signed in ink by an official of the bidding organization authorized to bind the organization to the provisions of the RFP and Proposal. The Transmittal Letter must include the following:

- Statement of the willingness and assurance of readiness to provide the services defined in the RFP.
- Statement that the bidding organization agrees to all terms contained in the RFP.
- A statement of Affirmative Action that the bidder does not discriminate in its employment practices with regard to race, color, religion, age (except as provided by law), sex, sexual orientation, marital status, political affiliation, national origin, or handicap and complies with all applicable provisions of Public Law 101-336, Americans with Disabilities Act.
- Identification of the person who will serve as primary contact for the State's Issuing Officer, and that person's address, telephone number and fax number.
- Bidders must include a statement certifying that the price was arrived at without any conflict of interest.

The bidder must provide a ‘Bidder Information Sheet’ containing the following information:

- Name of company or individual
- Mailing address
- Street address (for FEDEX or other mail service)
- Company Federal ID Number (or if an individual, social security number)
- Vermont Department of Taxes Business Account Number (if any)
- Bid Amount
- Name and title of person who would sign the contract
- Name and title of the company contact person (if different)
- For each key person:
  - Direct telephone number
  - Fax number
  - Email address

#### **4.2.2 Proposal Table of Contents**

The proposal table of contents should properly identify each section and its contents. Paginate each section and subsection.

#### **4.2.3 Executive Summary**

The Executive Summary should provide an overview of the proposing organization and a general description of the approach to meet the requirements of the RFP.

#### **4.2.4 Corporate Background and Experience**

The organization must show that it has the resources and expertise to carry out the tasks requested. All bidders must have, at a minimum, staff level personnel with a variety of clinical expertise and have experience in assessing broad based medical services through quality assurance technology such as practice guidelines and quality indicators; the development, evaluation and implementation of practice guidelines; and the design, implementation and assessment of quality improvement projects. The bidder must also have significant experience in research methodology and statistical analytical methods.

Bids shall include the following:

1. The bidder should provide suitable evidence that the bidding entity has sufficient organizational and financial resources to provide the services offered. The bidder must include a copy of the most recent audited financial statement.
2. The bidder should provide suitable evidence that the bidder has experience in the area of quality assurance/ quality improvement working with state Medicaid offices.
3. The bidder should provide a detailed description of the bidder's experience in working with Medicaid recipients, providers, and data sources and their knowledge of Medicaid program requirements.

4. The bidder should provide suitable evidence of their general understanding of the health care system in Vermont and the health needs of the enrollee population.
5. A description of the bidder's background and experience in using practice guidelines to assess quality of care issues.
6. A description of the bidder's specific training or skills in research methodology and statistical analysis. The bidder should describe its methodology for evaluating quality improvement projects, focused studies, case/chart reviews, data abstraction, statistical analysis, and data validation.
7. Additionally, bidder should provide a listing and description of all projects that involved similar activities. Project descriptions must include the client name; contact person and phone number, duration of the project, dollar amount, a description of the scope of services provided and a description of project components that are similar to the services defined in this RFP.

#### **4.2.5 Proposed Staff**

The bidder must identify all staff that will be assigned to the project, describe the role of each staff member in completion of this project, and provide a brief description of each person's experience in performing similar services. If a person has not yet been hired, a detailed position description should be submitted. Identified staff positions should be consistent with those listed in the budget. The Project Director must have at least 2 years experience in the development and implementation of quality improvement programs.

This section should also include:

- Resumes of key staff members (or job descriptions for those positions that are not filled)
- Lead Staff Member for each subsection in Section 3.

#### **4.2.6 Proposed Subcontractors**

The bidder must identify all subcontractors that it intends to use in fulfilling the requirements of this project. The role of subcontractor(s) should be clearly defined and relevant experience should be included.

#### **4.2.7 References**

Proposals must include at least three (3) business references that demonstrate the bidder's prior experience in the areas for which services are being offered. Each reference shall include the name, address and phone number of the client organization and of the responsible project manager at the client organization, and description of the project or work performed.

### **4.3 Responses to Questions on Scope of Work Components**

The bidder must describe its ability and approach to provide the requested services by responding to each of the questions listed below.

#### **4.3.1 Responses to Section 3.1**

The bidder must present the following general information in response to Section 3.1 External Quality Review:

1. Describe any previous experience as External Quality Review Organization, and attach evidence if the bidder is under contract as a PRO or has been deemed PRO-like by CMS.
2. Describe any previous relevant experience the bidder has had in working with Medicaid recipients with a mental illness, developmental disabilities, traumatic brain injury, mental health and long term services and supports providers, and their corresponding data sources.
3. Describe any previous relevant experience the bidder has had in developing, implementing and evaluating quality improvement projects, especially projects which focused on individuals with a mental illness.
4. Describe any previous relevant experience the bidder has had with consumer centered organizations or programs, especially those that support or provide services to individuals with a mental illness.

#### **4.3.2 Responses to Section 3.2.1.1**

The bidder must present the following information in response to Section 3.2.1.1: Validation of Performance Improvement Projects

1. Describe any previous relevant experience the bidder has had in reviewing, validating and evaluating quality improvement projects.
2. For two previous quality improvement projects that have been reviewed, validated or evaluated by the bidder, describe the process used to review, validate, or evaluate the project, how the impact of the project was measured, how this impact was communicated to relevant stakeholders such as providers, purchasers, consumers, and advocates, and what areas were identified as opportunities for future improvement.

#### **4.3.3 Responses to Section 3.2.1.2**

The bidder must present the following information in response to Section 3.2.1.2: Validation of Performance Measures.

1. Describe any previous relevant experience the bidder has had in working with Medicaid data sources.
2. Describe the proposed study design including the sampling methodology, sample size,

probable data sources, data definitions and data verification techniques. If the bidder proposes to use data pertaining to services rendered to non-Vermont residents and/or non-Medicaid recipients, the need for this data and its validity in the research design must be explained. The description of the study design must also include a discussion of the proposed standards, quality indicators and analytical techniques.

#### **4.3.4 Responses to Section 3.2.1.3**

The bidder must present the following information in response to Sections 3.2.1.3: Review of MCE compliance with State specified standards for quality program operations.

1. Describe any previous relevant experience the bidder has had in providing consultation to State Medicaid Agencies in the areas of compliance with federal and state regulations and/or standards for Medicaid Managed Care plans.
2. Describe audit experience, especially with document review and interviewing, regarding determining compliance with MCE access, structure and operation, and measurement and improvement standards.
3. Provide a sample report of audit findings

#### **4.3.5 Responses to Section 3.2.1.4**

The bidder must present the following information in response to Sections 3.2.1.4: Other Activities for the Technical Report as well as managing communications and meetings.

1. Describe any previous relevant experience the bidder has had in generating technical reports in accordance with Section 438.358 of the CFR.
2. Provide a sample technical report that describes the manner in which data from all activities conducted in accordance with Section 438.358 were aggregated and analyzed, and conclusions were drawn as to the quality, timeliness, and access to the care furnished by the MCE.

#### **4.3.6 Work Plan & Implementation Timeline**

The work plan must be responsive to the requirements set out in Section 3 and must include proposed time periods and staff hours for each subsection. The bidder shall provide an implementation timeline with a description and listing of tasks and subtasks to be performed in order to meet the requirements of the RFP. The implementation timeline should be presented in the form of a timeline or Gantt chart, identifying the timeframe for commencement and completion of each task.

## **4.4 Cost Proposal**

The cost proposal must be responsive to the requirements set out in Section 3. Cost proposals must include an estimate of the personnel and operating costs for each subsection. Personnel estimates should include staff hours for each subsection. Cost proposals must include for the services set out in the work plan, and a total.

Cost proposal will include:

- Annual Cost Estimate for year 1 – February 15, 2016 through February 14, 2017
- Annual Cost Estimate for year 2 – February 15, 2017 through February 14, 2018
- Explanations & Assumptions for each of the cost estimates

The cost proposal must clearly describe and identify the estimated costs of performing all services under this contract, according to the scope of work described in the RFP. The proposal budgets should follow general format of the cost estimate form included in this RFP. Cost proposals must describe all assumptions made in deriving the total costs under the contract. The explanations and assumptions should be clear and should explain how the individual costs in a line item were determined. The following descriptions should serve as a guide in developing a cost proposal.

### **4.4.1 Personnel**

The proposal should include all the staff that will be directly involved in the day to day operation of the project. Include the number of staff for each position and the total full time equivalent (FTE). Personnel costs should be calculated to include fringe and tax costs. Any assumptions used to determine personnel costs should be described. The number and type of staff should be the same as described in section 4.7 under Staffing.

### **4.4.2 Administrative Costs**

#### Telephone & Communications

The bidder is responsible for all communications costs.

#### Other Direct Costs

Any other items that the bidder identifies as a cost in meeting the scope of work should be itemized.

#### Overall Organization Administrative Costs

Indirect and direct administrative costs must be separated. Direct expenses should be itemized. Indirect expenses should be accompanied by an explanation as to how the figure was set.

**4.4.3 Example of Cost Form:**

<b>Category</b>	<b># Staff</b>	<b># FTE's</b>	<b>Item 3.2.1.1</b>	<b>Item 3.2.1.2</b>	<b>Item 3.2.1.3</b>	<b>Item 3.2.1.4</b>	<b>Total</b>
<b>Personnel:</b>							
Total Personnel Costs							
<b>Administrative/Other Costs:</b>							
Rent							
Telephone							
Travel							
Consultants							
Other Direct Costs							
<b>Total Administrative/Other Costs:</b>							
<b>Total Direct and Indirect Cost</b>							
<b>Total Cost</b>							

#### 4.4.4 Products & Services Ineligible for Profit

All of the following product and service categories, whether purchased, leased and/or used by the contractor [and subcontract(s)], in conjunction with this RFP shall not include any profit for the Contractor [and subcontractor(s)].

- a. Postage - for US Postal rates utilized to mail documents to providers, beneficiaries, the AHS, etc.
- b. Parcel Services and Common Carriers
- c. Personal Computers (PCs), Monitors, Printers, Related Equipment and Software – refers to all direct costs for the installation and monthly charges for data lines; and the purchase, lease, installation, and maintenance of equipment, located at (or for use at) the contractor's, State, user and provider sites. Also included in this category is the direct purchase and maintenance costs incurred on State-provided equipment used by the contractor to receive and process data.
- d. Printing – including the purchase of paper, envelopes, editing, distribution, use of a printing facility, etc.
- e. Telephone Toll Charges and Telecommunications – for only the actual telephone utility charges paid for by the contractor. Each toll charge must be directly supported by a billing from the telephone utility.
- f. Facilities – includes, but is not limited to, rental for office space, facilities improvement, etc.
- g. Audits
- h. Taxes – all Federal and State.
- i. Office Furniture and Equipment – copiers, fax machines, etc.
- j. Insurance – including, but not limited to, Worker's Compensation, Unemployment, Automotive, Liability, Crime, Health, etc.
- k. Travel – in-state or out-of-state.

## **SECTION 5: Agency of Human Services Responsibilities**

### **5.1 State Project Manager**

The state will identify a person to act as the State Project Manager prior to the contract taking effect.

### **5.2 Payment**

The Contractor will be paid on a price not to exceed basis. The State will make full payment to the Contractor within thirty (30) days of receipt of a properly completed invoice for services. Failure to meet timelines or to deliver the required products will result in withholding of payment due until such product or products are delivered. Final payment will be made after all required work is completed. Services shall be billed monthly.

The contractor shall submit monthly itemized invoices to the state detailing:

- Personnel costs, including direct labor and fringe benefits; and
- Operating costs, including travel and office expenses.

A completed invoice includes an identification of the number of hours worked by each position for each component within the scope of work, and cost of authorized administrative expenses.

The State will reimburse the Contractor minus 10% retainage on each invoice subject to receipt of all deliverables.

Reimbursement of travel expenses shall follow the reimbursement rates specified in the Vermont State non-management employees' contract.

### **5.3 Term of the Contract**

The Contract is expected to commence on February 15, 2016, or upon the date of execution by all parties and shall end on February 14, 2018. The contract may subsequently be renewed for a period or periods totaling up to two years by mutual agreement.

### **5.4 Data Available to Contractor**

Once work has commenced on the contract, AHS will make the following resources available to the Contractor:

- Claims data related to services delivered to Medicaid enrollees.
- Other data sources deemed necessary for the analysis by AHS and the Contractor.

## **SECTION 6: PROPOSAL EVALUATION AND SELECTION**

### **6.1 Contract Award**

A contract award will be made to the bidder whose proposal is determined to be the most advantageous to the State, taking into account price and other evaluation criteria. One or more contracts may be awarded as a result of proposals submitted in response to this RFP. The State reserves the right to award contracts for individual deliverables if that is advantageous to the State. The State reserves the right to reject any and all proposals submitted in response to the RFP.

### **6.2 Evaluation Overview**

An Evaluation Team comprised of representatives from the AHS will be charged with evaluating proposals. Proposals will be evaluated and weighted using the criteria in section 6.3.

The State's Evaluation Team will evaluate the experience, corporate resources and qualifications of the bidder (and any subcontractors). The State's Evaluation Team will determine the extent to which the bidder has the capabilities and financial resources to undertake the workload generated by this RFP. As necessary, references will be checked. Documents and reports submitted by the bidder will be assessed on their quality and relevance to their response.

The State reserves the right to contact any or all bidders to request a site visit, clarification and/or additional information at any point in the process. The state may conduct interviews with one or more bidders. In such an event, bidders may be required to travel to Williston, VT, at their own expense to participate in an on-site interview.

During the evaluation process, bidders may be contacted for the purpose of obtaining clarification of their response. However, no clarification will be sought if a bidder completely fails to address a feature contained in the RFP document. If the failure was in response to mandatory feature, the bidder may be disqualified.

Upon completion of the evaluation process, the AHS may select one or more bidders with which to negotiate a contract, based on the evaluation findings and other criteria deemed relevant for ensuring that the decision made is the best interest of the State. In the event the State is successful in negotiating with the bidder(s), the State will issue a notice of award. In the event the State is not successful in negotiating a contract with a selected bidder, the State reserves that option of negotiating with another bidder.

### **6.3 Evaluation Criteria**

The State will conduct a comprehensive, fair, and impartial evaluation of proposals received in response to this RFP. The evaluation will consist of the following:

- Evaluation of Minimum Requirements (10 points)
- Evaluation of Organization, Capabilities, and Experience (30 points)
- Evaluation of Proposed Approach (35 points)
- Evaluation of Cost Proposal (25 points)

### **6.3.1 Evaluation of Minimum Requirements**

The purpose of this step is to determine whether each proposal is sufficiently responsive to the RFP to permit a complete evaluation of the organization and its experience. Proposals must comply with the instructions and requirements contained in the RFP. Failure to comply with the requirements shall deem the proposal non-responsive and subject to rejection without further consideration. The State reserves the right to waive minor irregularities. The State reserves the right to reject any and all proposals.

- a. The proposal must have been received as provided in Section 4.1 in the number and types of copies specified.
- b. The proposal must follow the format as provided in Section 4.2.
- c. The proposal must contain sections as provided in Section 4.2.
- d. The proposal must include a price proposal as outlined in Section 4.4.
- e. The proposal must respond to Section 3 with specific information as provided in Section 4.3.
- f. Appendix A must be accepted.

### **6.3.2 Evaluation of the Organization, Capabilities, and Experience**

The State will evaluate the experience and qualification of the bidder and any subcontractors. The State will determine the extent to which the bidder has the capabilities and financial resources to undertake the workload generated by this contract. The process will be conducted by the Evaluation Team. As necessary, references will be checked. Documents and reports submitted by the bidder will be assessed on the quality and relevance to their response.

### **6.3.3 Evaluation of Proposed Approach**

The State will evaluate the proposed approach and timeframes specified in each bidder's response. Evaluation will include review of the Executive Summary, Work Plan and Responses to the State's Questions.

### **6.3.4 Evaluation of Cost Proposal**

Each bidder's Cost Proposal will be reviewed and evaluated. For each proposal considered, the contract proposal and corresponding costs will be examined to determine the extent to which they will meet the requirements of the RFP and objectives of the State. The State will evaluate Cost Proposal assumptions and calculations to determine whether the estimated costs appear reasonable. Any proposal or its cost that is incomplete or in which there is significant inconsistency or inaccuracy may be rejected by the State. The State reserves the right to reject all proposals.

Any proposal and its price that is incomplete or in which there is significant inconsistency or inaccuracy may be rejected by the State.

## **6.4 Proposal Selection**

The Secretary of the Agency of Human Services (or designee) will make the final selection of the Contractor. The selected contractor will be requested to enter into negotiation with the State on detailed work plans, deliverables and time tables. Other bidders will be notified of the selection and of their status. If negotiations do not result in a signed contract, the State will make another selection. If all proposals are rejected, bidders will be notified. Proposals made by bidders will not be made available to other bidders until after a contract is completed and filed with the appropriate state agency.

Appendix 1: State of Vermont Customary Contract for Services

**STATE OF VERMONT  
CONTRACT FOR SERVICES**

1. **Parties.** This is a contract for personal services between **(Insert Department Name)** (hereafter called "State"), and **(Insert name of contractor)**, with a principal place of business in **(Address of Contractor)** (hereafter called "Contractor"). The Contractor's form of business organization is a **(type of business - e.g. LLC, PC, Inc., Individual, etc.)**. The Contractor's local address is **(Insert alternative local address the Contractor)**. 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 management. 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 **\$(Insert maximum limiting amount of the contract)**.
  
4. **Contract Term.** The period of Contractor's performance shall begin on (Insert beginning effective Date) and end on (Insert expiration Date).
  
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/or is not)** 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 **(insert number of days)** days in advance.
  
8. **Attachments.** This contract consists of **(insert # pages, including attachments)** 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 D - Modifications of Insurance
  - Attachment E - Business Associate Agreement
  - Attachment F - Customary Contract Provisions of the Agency of Human Services

**STATE OF VERMONT  
CONTRACT FOR SERVICES**

The order of precedence of documents shall be as follows:

- 1). This document
- 2). Attachment D (if any)
- 3). Attachment C
- 4). Attachment A
- 5). Attachment B
- 6). Attachment E (if any)
- 7). Attachment F
- 8). Other Attachments (if any)

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

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

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

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

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

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

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

Name:

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

Agency/Dept.: Human Services /

Title:

Phone:

e-mail:

Alternative Contact: (if any)

**STATE OF VERMONT  
CONTRACT FOR SERVICES**

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

## **ATTACHMENT B**

### **PAYMENT PROVISIONS**

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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:

**STATE OF VERMONT  
CONTRACT FOR SERVICES**

**ATTACHMENT C: STANDARD STATE 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 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.
- 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.

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 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 the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party’s operations. These are solely minimums that have been established to protect the interests of the State.

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

General Liability and Property Damage: With respect to all operations performed under the contract, 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 \$\_\_\_\_\_ per occurrence, and \$\_\_\_\_\_ 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, 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.

**10. 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.

**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.
- 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.

**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 this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

**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.

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>

**19. Certification Regarding Use of State Funds:** In the case that 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.

**20. Internal Controls:** In the case that this Agreement is an award that is funded in whole or in part by Federal funds, 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).

**21. Mandatory Disclosures:** In the case that this Agreement is an award funded in whole or in part by Federal funds, in accordance with 2CFR 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.

- 22. Conflict of Interest:** Party must disclose in writing any potential conflict of interest in accordance with Uniform Guidance §200.112, Bulletin 5 Section X and Bulletin 3.5 Section IV.B.

(End of Standard Provisions)

**STATE OF VERMONT  
CONTRACT FOR SERVICES  
ATTACHMENT E  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its \_\_\_\_\_ **[Insert Name of AHS Department, Office or Division]** (“Covered Entity”) and **[Insert Name of Contractor/Grantee]** (“Business Associate”) as of \_\_\_\_\_ (“Effective Date”).

This Agreement supplements and is made a part of the contract/grant to which it is attached.

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

The parties agree as follows:

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

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

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

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

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

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

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

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

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

**2. Identification and Disclosure of Privacy and Security Offices.** Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity’s contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

**3. Permitted and Required Uses/Disclosures of PHI.**

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

Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 17 or, (b) as otherwise permitted by Section 3.

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

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

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

6. **Documenting and Reporting Breaches.**

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

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

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

risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

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

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

**8. Providing Notice of Breaches.**

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

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

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

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

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

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

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

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

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

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

**14. Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 18.8.

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

**15. Return/Destruction of PHI.**

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

15.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI. This shall also apply to all Agents and Subcontractors of Business Associate.

**16. Penalties and Training.** 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. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

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

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

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

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

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

**18. Miscellaneous.**

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

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

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

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

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

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

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 the PHI may not be sold without Agency’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 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 5/5/15)

**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](http://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.

*Attachment F - Revised AHS -12/10/10*