DVHA Routing Form

Revision Date 5/1/12

Type of Agreement: **Contract** Agreement #: **24463** Form of Agreement: **New** Amendment #:

Name of Recipient: **Trustees of Dartmouth College** Vendor #: **42891**

Program Manager : **Michelle Lavalle** Phone #: **802-585-9636**

Agreement Manager: **Meaghan Kelley** Phone #: **802-871-3302**

Brief Explanation of Agreement: **Executive coaching for State managers and leaders around the Health Benefits Exchange Program**

Start Date: **June 19, 2013** End Date: **February 28, 2014** Maximum Amount: **$153,500.00**

Amendments Only: Maximum Prior Amount: **$0.00** Percentage of Change: **0.00%**

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

Funding Source

ACA Exchange 93.525	**$153,500.00**		

Contents of Attached Packet

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

Reviewer		Reviewer Initials	Date In	Date Out
DVHA Grant & Contract Administrator	**Kate Jones**	K.J.		
DVHA BO	**Jill Gould**	J.G.		
DVHA Commissioner or Designee	**Mark Larson, Commissioner**	M.L.		
AHS Attorney General	**Seth Steinzor, AAG**	S.S.		
Following Approvals for Contracts Only:				
AHS CIO				
AHS Central Office	**Diane Nealy**	D.N.		
AHS Secretary	**Dixie Henry**	D.H.		

Vision Account Codes:

☐ FFATA Entry ☐ Grant Tracking Module Vision PO #: Initials & Date: Approval & B/C:

STATE OF VERMONT CONTRACT SUMMARY AND CERTIFICATION - - - - - - - - - - Form AA-14 (8/22/11)

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

I. CONTRACT INFORMATION:

Agency/Department: AHS/ DVHA **Contract #:** 24463 **Amendment #:**

Vendor Name: Trustees of Dartmouth College VISION Vendor No: 42891

Vendor Address: 7 Lebanon Street, Hanover, NH 03755

Starting Date: 6/19/2013 **Ending Date:** 2/28/2014 **Amendment Date:**

Summary of agreement or amendment: Executive coaching for State managers and leaders around the Health Benefit Exchange Program

II. FINANCIAL INFORMATION

Maximum Payable: $153,500.00 Prior Maximum: $ 0.00 Prior Contract # (If Renewal):

Current Amendment: $ Cumulative amendments: $ % Cumulative Change: 0.00 %

Business Unit(s): 3410; ; - [notes:] **VISION Account(s): 507600;**

II. PERFORMANCE INFORMATION

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

Estimated Funding Split: G-Fund % S-Fund % F-Fund 100.00 % GC-Fund % Other %

III. PUBLIC COMPETITION

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

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

IV. TYPE OF AGREEMENT & PERFORMANCE INFORMATION

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

V. SUITABILITY FOR CONTRACT FOR SERVICE

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

VI. CONTRACTING PLAN APPLICABLE:

Are one or more contract or terms & conditions provisions waived under a pre-approved Contracting Plan? ☐ Yes ☒ No

VII. CONFLICT OF INTEREST

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

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

VIII. PRIOR APPROVALS REQUIRED OR REQUESTED

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

☒ Yes ☐ No I request the Attorney General review this agreement as to form

No, already performed by in-house AAG or counsel: _____ (initial)

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

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

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

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

IX. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL D.N. E.B.

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

E-SIGNed by Mark Larson on 2013-Jun-19

Date Agency / Department Head

E-SIGNed by Dixie Henry on 2013-Jun-19

Date Agency Secretary or Other Department Head (if required)

E-SIGNed by Seth Steinzor on 2013-Jun-19

Date Approval by Attorney General

Date Approved by Commissioner of Human Resources

E-SIGNed by Michael Clasen on 2013-Jun-19

Date CIO Date CMO Date Secretary of Administration

VERMONT

State of Vermont
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston VT 05495-2807
dvha.vermont.gov

Agency of Human Services
[Phone] 802-879-5900
[Fax] 802-879-5651

MEMORANDUM

TO: Jeb Spaulding, Secretary AoA

THROUGH: Doug Racine, Secretary AHS D.H.

FROM: Mark Larson, Commissioner DVHA M.L.

DATE: June 6, 2013

RE: Sole Source Request: Tuck Executive Education
June 19, 2013- February 28, 2014 $153,500

The Health Benefit Exchange (the Exchange) is one of five projects situated within the Health Service Enterprise (HSE). The Exchange will be modernizing the purchase of health insurance so that many Vermonters will have the ability to compare health insurance plans and obtain federal premium tax credits and cost-sharing subsidies. The Exchange must be operational to support enrollment in October 2013, with insurance coverage effective January 1, 2014. The Exchange is also the first implementation of our health care reform agenda and impacts on several agencies and departments. One of the chief challenges for health reform leadership (including Cabinet, Commissioner and Deputy Commissioner level staff from the AoA, AHS Central Office, DCF, DVHA, and DFR) will be managing and communicating change within state government and learning from this implementation to inform the next steps in health reform. Building upon the capacity and capability of leaders responsible for managing and communicating this change will greatly enhance the State's success and is an essential element of mitigating many of the risks faced. The work ahead of us requires a unique set of management and leadership skills to lead this change. This contract would provide executive development training to ensure that Vermont's managers and leaders successfully meet the challenges that are inherent in complex systems change. A program of executive training and coaching will ensure success of health care reform and will improve our efficiency and effectiveness as managers.

DVHA would like to contract with Tuck Executive Education at Dartmouth College to customize a program of executive education to meet the needs of the State's team. Tuck is uniquely qualified to provide this service and the following training modules that Tuck offers will meet the needs of the State's leaders around managing this complex systems transformation. Some examples could include:

- Developing a Strategic Mindset
- Strategic Communication Imperative: Connecting Strategic Vision to Implementation
- Cross-Functional Management
- Ethical Leadership and Culture

VERMONT

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Agency of Human Services

The justification for moving forward with a sole source contract is to maximize the leadership education during the last phase of Exchange implementation – time is of the essence to ensure that leaders can navigate this phase of the project as efficiently and effectively as possible. The fact that Tuck faculty have experience in teaching to and managing complex systems change and their close proximity to Vermont make them the leading and natural choice to spearhead this effort. In addition, Dartmouth College provides comparable rates with other executive education programs of a similar caliber around the country. Lastly, Dartmouth is physically close to the work sites for the leadership team which will minimize travel time and costs.

This contract complies with all mandatory provisions of AOA Bulletin 3.5. This agreement will be financed by enhanced Federal funding under the approved Health Services Enterprise IAPD. DVHA looks forward to approval of this agreement.

Approval: E-SIGNed by Michael Clasen on 2013-Jun-19

JEB SPAULDING, AOA DATE

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Trustees of Dartmouth College, Tuck School of Business, with a principal place of business, Hanover, NH (hereafter called "Contractor"). The Contractor's form of business organization is an institute of higher learning. The Contractor's local address is 7 Lebanon Street, Hanover, NH 03755. 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 executive coaching for State managers and leaders around the Health Services Enterprise program. 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 $153,500.00

4. **Contract Term.** The period of Contractor's performance shall begin on June 19, 2013 and end on February 28, 2014.

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

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

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

7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 30 days in advance. Notwithstanding this provision, if a governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this contract are provided, is not in compliance with State and Federal law or is operating with deficiencies the State may terminate this contract immediately and notify the Contractor accordingly. Also, in the event that federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract with no obligation to pay the Contractor from State revenues. In the event of such termination, the Contractor shall be entitled to payment for Services performed including costs incurred with delivering the Inventory of Leadership Styles Assessment prior to the effective date of termination.

8. **Attachments.** This contract consists of 17 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

The order of precedence of documents shall be as follows:

1). This document
2). Attachment D
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:

E-SIGNed by Lori Collins
on 2013-Jun-19

MARK LARSON, COMMISSIONER DATE

BY THE CONTRACTOR:

E-SIGNed by Clark Callahan
on 2013-Jun-19

CLARK CALLAHAN, EXECUTIVE DIRECTOR DATE

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED

The contractual relationship is hereby defined as a vendor relationship under OMB Circular A-133 Subpart B.210. The Contractor shall conduct an executive education program that shall be tailored to the Health Services Enterprise (HSE) Executive Steering Committee, which will be comprised of Agency Secretaries, Department Commissioners, Deputy Commissioners, Deputy Secretaries, and Director level staff. Trainings will be based on the Contractor's understanding, with direction from State staff, of the federal and state political and regulatory health care reform environment and the related management challenges that the State must meet to ensure the successful implementation and ongoing operation of the Vermont Health Benefit Exchange and other health care reform initiatives. Some challenges include, but are not limited to: time constraints, large program regulations, managing four large-scale transformation projects simultaneously, and monitoring the impacts of these projects on State staff and Vermonters. State government officials must have the knowledge, skills and abilities to create and manage complex system changes in an organization, as well as evaluate whether they are successful. This includes, but is not limited to: IT, business processes, and culture change.

The executive education program shall be comprised of a series of 6 workshops, including one full-day kick off workshop and five half-day workshops to follow. The program will focus on tactical strategies that the State will be able to incorporate into their health care reform initiatives. These workshops will occur no more frequently than monthly but no less than quarterly. The full-day kick off meeting will occur in June 2013, with a specific date to be determined by the State and Contractor collectively. The series will run through January 2014, with the last half-day training occurring no later than January 2014, and will address specific topics to be defined by the State and Contractor collectively through pre-training conference calls occurring in the weeks prior to each session. The specific dates and times will be determined and scheduled by the State and Contractor collectively dependent upon availability of both parties. It has been determined by the State and agreed upon by the Contractor that all workshops in the series will be held in State Offices in Vermont at locations to be determined and arranged by, and at the rental expense of, the State, in either Chittenden or Washington County, which will require the Contractor to travel to Vermont. Appropriate training space and materials required for each of the half-day trainings will be obtained by the State based on the approved agenda for each day's training. Special accommodations will be determined by the State in pre-training conference calls, as required by the Contractor, including but not limited to: Smartboards, laptops, projectors, and other State equipment.

The State shall provide the Contractor with information around the long term and short term goals of the State to assist in the development of the trainings. All necessary kick off meeting information will be provided to the Contractor in writing by the State within (3) business days of execution of this agreement. The kickoff meeting agenda will be developed within one (1) week of the execution of this agreement by the State and Contractor collectively and approved by the State. Subsequent training agendas and information, including expected outcomes and training surveys, will be agreed upon during pre-meeting conference calls and reduced to writing by the Contractor and approved by the State within two (2) weeks of any scheduled half-day trainings. Topics to be covered will be derived from the Contractor's Tuck Executive Education Leadership and Strategic Impact syllabus, the Master of Healthcare Delivery Science Management and Leadership of Health Care Organizations syllabus, and training modules which may be combined and may include but are not limited to:

- Developing a Strategic Mindset
- Creating the Need for Change
- Change Management

- Cross-Functional Management
- Ethical Leadership and Culture
- Planning for Innovation and Execution
- Strategic Challenges in Executive Teams
- The Strategic Communication Imperative: Connecting Strategic Vision to Implementation

All training materials provided by the Contractor, including media, images, and materials, shall be reviewed and approved by the State within two (2) business days prior to each of the trainings. The Contractor shall not deviate from a training agenda or substitute any training materials once they have been approved by the State. The Contractor shall retain ownership of all training materials, including but not limited to: agenda, media, images, and syllabi.

The Inventory of Leadership Styles assessment will be conducted online for participating State staff and arranged by the Contractor. The Inventory of Leadership Styles is a 360 Assessment of the individual training participants to determine existing leadership styles, behavioral styles, knowledge, and overall management abilities and skills. The State shall notify the Contractor of training participants and participants' email contact information within four (4) weeks of the training to arrange for the assessment. During the training, the Contractor shall provide access to and review results with participants. The Contractor shall maintain confidentiality of all individual results, and inform the State of trainees who did not participate in the training. The results will be reviewed by the Contractor and will provide a baseline knowledge of State staff abilities and current management strategies to better customize trainings to suit the State's needs.

Post training surveys will be administered for the kickoff and each of the five (5) half-day trainings and at the conclusion of the training series to the HSE Executive Steering Committee. Surveys will be provided by the Contractor and will be approved by the State one week before being issued to training attendees. Surveys will be provided to at the conclusion of each training .Surveys will evaluate the individual half-day trainings based on a five-point rating scale: 5= Excellent, 1= Poor, with the exception of questions regarding workload which range from: 5= Too Heavy; 3= Just Right; and 1= Too Light. The surveys will provide a method to determine whether or not stated training outcomes have been achieved. It is the expectation of the State that at the conclusion of the series, State executives will have a greater understanding of, and the ability to implement, cross-functional management; as well as a more thorough understanding of the impacts of change on the organization and tools to manage that change successfully as well as the ability to connect strategy and implementation. The State and Contractor shall receive copies of the surveys after each training session for review and evaluation. Survey responses that average below a 2.5 on the 5 point scale shall result in an unsatisfactory training and require a remediation plan to be determined and approved by the State and Contractor at no additional cost to the State. A remediation plan can be inclusive of follow-up learning materials provided to the State, forensic diagnostic assessment, staff interviews, focus groups, etc.

The State will determine all training participants and State scheduling needs, as well as manage communication to appropriate State staff. Any work product deemed unacceptable by the State will be subject to revision by the Contractor based upon the remediation plan described within this agreement at no additional cost to the State. Payment will be contingent upon the State accepting each work product, the survey responses, and any stipulations within Attachment B of this Agreement.

The authorized representative for the State shall be:
Michelle Lavallee
Health Reform Portfolio Director
Michelle.lavallee@state.vt.us
802-585-9636

The authorized representative for the Contractor shall be:
Philip Barta
Associate Director
Philip.E.Barta@tuck.dartmouth.edu
603-646-6474

ATTACHMENT B
PAYMENT PROVISIONS

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

1. Contractor invoices shall be submitted no more frequently than monthly, but no later than quarterly, and shall include specific trainings performed during the specified billing period and the total amount billed. Two half-day sessions would equal one full-day of delivery, inclusive of all travel expenses. The State shall pay the Contractor $20,500 for one half-day training session, inclusive of all travel expenses. The State shall pay the Contractor $41,000.00 per full-day training, inclusive of all travel expenses. The total amount for one full-day of workshops and 5 half-day workshops shall not exceed $143,500. The State shall pay the Contractor $180.00 per person for an Inventory of Leadership Styles training course not to exceed $10,000.

2. The State shall withhold a total of $15,350 or 10% of the maximum amount, to be withheld from each submitted invoice. Payment shall be dependent on successful completion of the trainings as reflected by the survey results taken at the completion of the training sessions. An average rating of 2.5 or below constitutes an unsatisfactory training. Contractor shall provide documentation of achieving performance measures upon request by the State. Funds shall be released with the submission, review, and State approval of a retainage statement.

3. In the event that the State cancels a scheduled training, the State shall pay the Contractor for the scheduled training at the below rates:

Notification of Cancellation Prior to Scheduled Program Delivery Date	Cancellation Fee as Percentage of Delivery Fees
More than 90 days	0%
60 - 90 days	50%
30 - 59 days	75%
Less than 30 days	100%

Such assessments shall not be made to the extent that cancellation of any scheduled training can be attributed to unforeseeable catastrophic events experienced at the State's designated training site or which has a material effect on the scheduled training.

4. No benefits, travel expenses, or insurance will be reimbursed by the State.

5. Invoices should reference this contract number and be submitted to:

   Business Office, Contracting Unit
   Department of Vermont Health Access
   312 Hurricane Lane, Suite 201
   Williston, VT 054953

6. The total maximum amount payable under this contract shall not exceed $153,500.

ATTACHMENT C
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

1. **Entire Agreement.** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

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

3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.

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

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

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

   The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The Party shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Agreement.

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

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

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

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

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

   Premises - Operations
   Products and Completed Operations
   Personal Injury Liability
   Contractual Liability

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

   $1,000,000 Per Occurrence
   $1,000,000 General Aggregate
   $1,000,000 Products/Completed Operations Aggregate
   $ 50,000 Fire/ Legal/Liability

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

   Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: $1,000,000 combined single limit.

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

   Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of ***$1,000,000*** per occurrence, and ***$1,000,000*** 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.

   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. 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 will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

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

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

13. **Taxes Due to the State**:

    a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

    b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

    c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

    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 subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

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

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

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

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

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.

ATTACHMENT D
MODIFICATION OF STANDARD CONTRACT PROVISIONS

1, Attachment F, Section 5 "Voter Registration" does not apply to this Agreement.

2. Attachment F, Section 6 "Drug Free Workplace" does not apply to this Agreement.

3. Notwithstanding anything to the contrary in Attachment F, Section 10 "Intellectual Property/Work Product Ownership" of this Agreement:

(a) Contractor acknowledges that the State is retaining Contractor as an independent contractor to provide and/or produce certain Services, manuals and materials as described herein, for the State, and in cooperation with the State. Contractor agrees to provide all requisite Services and will retain the ownership of all resulting copyrights. Contractor retains the right to use or re-apply anything it creates or applies under this Agreement for other clients, conditioned upon the exclusion of any State-specific, or Confidential and Proprietary information of the State.

(b) Contractor hereby grants a perpetual, royalty-free, non-exclusive license to the State to reproduce, perform, display, and distribute, for internal discussion purposes, all copyrighted material produced for the State under this Agreement. The non-exclusive license permits the State to use the copyrighted material for its own purposes, subject to the terms of this Agreement.

(c) Contractor warrants to the State that all Services which it provides to the State under this Agreement will be its own original material and that, to the best of its knowledge, none of said Services will infringe upon the copyrights and/or legal interests of any third party. In the event that the Services consist of photographs and/or illustrations or other depiction of the personal likenesses of one or more third persons or of copyrightable architectural works, Contractor warrants that it will secure model or other releases from such persons or entities and their legal guardians when such models are under 18 years of age.

4. By adding to Attachment C, the following Sections:

20. Publicity. Contractor may not include the State's name or any factual description of the work performed under this Agreement in its list of references, in the experience section of proposals to third parties, or in any other manner without the prior written consent of the State. Contractor will submit to the State all advertising and other publicity materials relating to this Agreement in which the State's name or the Services performed hereunder are intended to be included, and will not publish or use such advertising or publicity materials without the State's prior written consent. The State may not use Contractor's name or marks without the prior written consent of Contractor, except in communications that are solely internal in nature, or otherwise to comply with applicable law.

21. Force Majeure. No party shall be liable for a delay in performance or failure to perform its obligations under the Agreement if such delay or failure is due to acts of God or any other event beyond the control of the parties including, without limitation, fire, explosion, weather, disease, war, insurrection, civil strife, riots, government action, closure of Dartmouth College, or power failure (a "Permitted Failure"). In the event of such Permitted Failure, the parties agree that they will negotiate to reschedule the Program at a mutually agreeable future date ("Rescheduled Program") and that this Agreement shall apply in all respects to the Rescheduled Program.

22. Dispute Resolution. All disputes between the Parties to this agreement will first be submitted for

informal resolution between authorized representatives of the Parties. If informal resolution is unsuccessful within 30 days, the dispute will be submitted for mediation to a neutral third party, mutually agreed upon by the Parties. In the event that mediation is unsuccessful, the Parties may file suit in the jurisdiction provided for in Section 2 of Attachment C of this Agreement.

7. The insurance requirements contained in Attachment C, Section 7 are hereby modified:

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

8. Reasons for Modifications:

The Contractor is a higher learning institute that is required to abide by State of New Hampshire and federal laws that conflict with regulations within Attachment C or F. Standard State of Vermont language does not include certain aspects that are required by entities monitoring the Contractor.

Approval:

Assistant Attorney General: _____

Date: _____

ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

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

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

3. **Medicaid Program Contractors**:

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

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

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

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

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

   Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP* (Automated Data Processing) *System Security Requirements and Review Process.*

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency**. The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and subcontractors receiving federal funds must assure

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

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

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

7. **Privacy and Security Standards.**

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

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

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

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

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

9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal

law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

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

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

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

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

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

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

    1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.

    2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of

Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

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

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

14. **Non–discrimination.** The Contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

    The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

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

    The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

    Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

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