

| STATE OF VERMONT GRANT AGREEMENT   |                       |   |                                   | Part 1-Grant Award Detail  |   |                                      |                        |
|--|-----------------------|---|-----------------------------------|--|---|--------------------------------------|------------------------|
| SECTION I - GENERAL GRANT INFORMATION  |                       |   |                                   |  |   |                                      |                        |
| <sup>1</sup> Grant #: 03410-1570-16  |                       |   |                                   | <sup>2</sup> Original <input checked="" type="checkbox"/>  |   | Amendment # <input type="checkbox"/> |                        |
| <sup>3</sup> Grant Title: Vermont Legal Aid  |                       |   |                                   |  |   |                                      |                        |
| <sup>4</sup> Amount Previously Awarded: \$0.00   |                       | <sup>5</sup> Amount Awarded This Action: \$547,983.00 |                                   | <sup>6</sup> Total Award Amount: \$547,983.00  |   |                                      |                        |
| <sup>7</sup> Award Start Date: 07/01/2016  |                       | <sup>8</sup> Award End Date: 06/30/2017               |                                   | <sup>9</sup> Subrecipient Award: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> |   |                                      |                        |
| <sup>10</sup> Vendor #: 42707  |                       | <sup>11</sup> Grantee Name: Vermont Legal Aid         |                                   |  |   |                                      |                        |
| <sup>12</sup> Grantee Address: PO Box 1367   |                       |   |                                   |  |   |                                      |                        |
| <sup>13</sup> City: Burlington   |                       |   | <sup>14</sup> State: VT           |  | <sup>15</sup> Zip Code: 05402   |                                      |                        |
| <sup>16</sup> State Granting Agency: Department of Vermont Health Access   |                       |   |                                   | <sup>17</sup> Business Unit: 03410   |   |                                      |                        |
| <sup>18</sup> Performance Measures: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>  |                       | <sup>19</sup> Match/In-Kind: Description:             |                                   |  |   |                                      |                        |
| <sup>20</sup> If this action is an amendment, the following is amended:<br>Amount: <input checked="" type="checkbox"/> Funding Allocation: <input type="checkbox"/> Performance Period: <input checked="" type="checkbox"/> Scope of Work: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> |                       |   |                                   |  |   |                                      |                        |
| SECTION II - SUBRECIPIENT AWARD INFORMATION  |                       |   |                                   |  |   |                                      |                        |
| <sup>21</sup> Grantee DUNS #:  |                       |   | <sup>22</sup> Indirect Rate: %    |  | <sup>23</sup> FFATA: YES <input type="checkbox"/> NO <input type="checkbox"/> |                                      |                        |
| <sup>24</sup> Grantee Fiscal Year End Month (MM format):   |                       |   | (Approved rate or de minimis 10%) |  | <sup>25</sup> R&D: <input type="checkbox"/>                                   |                                      |                        |
| <sup>26</sup> DUNS Registered Name (if different than VISION Vendor Name in Box 11):   |                       |   |                                   |  |   |                                      |                        |
| SECTION III - FUNDING ALLOCATION   |                       |   |                                   |  |   |                                      |                        |
| STATE FUNDS  |                       |   |                                   |  |   |                                      |                        |
| Fund Type  | 27 Awarded Previously | 28 Award This Action                                  | 29 Cumulative Award               | 30 Special & Other Fund Descriptions   |   |                                      |                        |
| General Fund   |                       |   | \$0.00                            |  |   |                                      |                        |
| Special Fund   |                       |   | \$0.00                            |  |   |                                      |                        |
| Global Commitment (non-subrecipient funds)   |                       | \$547,983.00  | \$547,983.00                      |  |   |                                      |                        |
| Other State Funds  |                       |   | \$0.00                            |  |   |                                      |                        |
| FEDERAL FUNDS<br><small>(includes subrecipient Global Commitment funds)</small>  |                       |   |                                   |  | Required Federal Award Information  |                                      |                        |
| 31 CFDA#   | 32 Program Title      | 33 Awarded Previously                                 | 34 Award This Action              | 35 Cumulative Award  | 36 FAIN   | 37 Fed Award Date                    | 38 Total Federal Award |
| 93.778   | Medicaid Admin        |   |                                   | \$0.00   |   |                                      |                        |
| <sup>39</sup> Federal Awarding Agency:   |                       | <sup>40</sup> Federal Award Project Descr:            |                                   |  |   |                                      |                        |
|  |                       |   |                                   | \$0.00   |   |                                      |                        |
| Federal Awarding Agency:   |                       | Federal Award Project Descr:                          |                                   |  |   |                                      |                        |
|  |                       |   |                                   | \$0.00   |   |                                      |                        |
| Federal Awarding Agency:   |                       | Federal Award Project Descr:                          |                                   |  |   |                                      |                        |
|  |                       |   |                                   | \$0.00   |   |                                      |                        |
| Federal Awarding Agency:   |                       | Federal Award Project Descr:                          |                                   |  |   |                                      |                        |
|  |                       |   |                                   | \$0.00   |   |                                      |                        |
| Federal Awarding Agency:   |                       | Federal Award Project Descr:                          |                                   |  |   |                                      |                        |
| <b>Total Awarded - All Funds</b>   |                       | \$0.00  | \$547,983.00                      | \$547,983.00   |   |                                      |                        |
| SECTION IV - CONTACT INFORMATION   |                       |   |                                   |  |   |                                      |                        |
| <sup>41</sup> STATE GRANTING AGENCY  |                       |   |                                   | <sup>42</sup> GRANTEE  |   |                                      |                        |
| NAME: Debbie Austin  |                       |   |                                   | NAME: ERIC AVILDSEN  |   |                                      |                        |
| TITLE: Project Lead, DVHA  |                       |   |                                   | TITLE: EXECUTIVE DIRECTOR  |   |                                      |                        |
| PHONE: (802) 879-5951  |                       |   |                                   | PHONE: (802) 383-2240  |   |                                      |                        |
| EMAIL: Debbie.Austin@vermont.gov   |                       |   |                                   | EMAIL: eavildsen@vtlegalaid.org  |   |                                      |                        |

**Part 2 – Grant Agreement**

1. **Parties**: This is a Grant Agreement for services between the State of Vermont, Department of Vermont Health Access (hereafter called “State”), and Vermont Legal Aid, Inc. through its Medicare Advocacy Project with a principal place of business at PO Box 1367, Burlington, Vermont 05402 (hereafter called “Contractor”). It is the Grantee’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Grantee is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter**: The subject matter of this Procurement Grant Agreement is to increase Medicare recoveries to offset Medicaid Program Costs. Detailed services to be provided by the Contractor are described in Attachment A.
3. **Award Details**: Amounts, dates and other award details are as shown in the attached *Grant Agreement Part 1-Grant Award Detail*. A detailed scope of work covered by this award is described in Attachment A.
4. **Maximum Amount**: In consideration of services to be performed by the Contractor, the State agrees to pay the Contractor, per payment provisions specified in Attachment B, a sum not to exceed \$547,983.00

Work performed between July 1, 2016 (retroactive date) and the signing or execution of this agreement that is in conformity with Attachment A may be billed under this agreement.

Contractor agrees that in exchange for the consideration of the option to bill for services performed, all terms and conditions described in this agreement shall apply to any and all services performed for or on behalf of the State. Contractor agrees that by submitting invoices, bills, or otherwise seeking compensation for services performed prior to the finalization of this agreement or signing of this agreement, contractor is agreeing to the application of all terms of this contract to that period and to that work. Contractor further agrees to defend, indemnify, and hold the State harmless for any claim, dispute, non-contractual cost or charge, or any liability whatsoever, whether in law, equity, or otherwise, which arises from or is connected to the work performed prior to the execution of this agreement. Contractor further agrees that these terms apply regardless of whether the work is accepted by the State, and regardless of whether payment is issued by the State to the Contractor for the work in question.

5. **Grant Term**: The effective date of this Grant Agreement shall be July 1, 2016 and end on June 30, 2017.
6. **Amendment**: No changes, modifications, or amendments in the terms and conditions of this procurement grant shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation**: This procurement grant agreement may be suspended or cancelled by either party by giving the other party 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 procurement grant are provided, is not in compliance with State and Federal law, the State may terminate this procurement grant immediately and notify the Contractor accordingly. Also, in the event that federal funds supporting this procurement grant become unavailable or are reduced, the State may cancel this procurement grant with no obligation to pay the Contractor from State revenues.

8. **Contact Persons for this Award:**

|  |                              |                             |                           |
|--|------------------------------|-----------------------------|---------------------------|
|  | <u>State Program Manager</u> | <u>State Fiscal Manager</u> | <u>For the Contractor</u> |
|--|------------------------------|-----------------------------|---------------------------|

|          |  |  |  |
|----------|--|--|--|
| Name:    | Debbie Austin  | Natalie Elvidge  | Eric Avildsen  |
| Phone #: | 802-879-5951   | 802-241-0389   | 802-383 -2240  |
| E-mail:  | <a href="mailto:Debbie.Austin@vermont.gov">Debbie.Austin@vermont.gov</a> | <a href="mailto:Natalie.Elvidge@vermont.gov">Natalie.Elvidge@vermont.gov</a> | <a href="mailto:eavildsen@vtlegalaid.org">eavildsen@vtlegalaid.org</a> |

**Notices to the Parties Under This Agreement**

To the extent notices are made under this agreement, the parties agree that such notices shall only be effective if sent to the following persons as representative of the parties:

|         | STATE REPRESENTATIVE  | CONTRACTOR/GRANTEE   |
|---------|---|--|
| Name    | Office of General Counsel   | Eric Avildsen  |
| Address | Department of Vermont Health Access (DVHA)<br>NOB 1 South, 280 State Drive<br>Waterbury, VT 05671 | P.O. Box 1367<br>Burlington, VT 05402                                  |
| Email   | <a href="mailto:AHS.DVHALegal@vermont.gov">AHS.DVHALegal@vermont.gov</a>                          | <a href="mailto:eavildsen@vtlegalaid.org">eavildsen@vtlegalaid.org</a> |

The parties agree that notices may be sent by electronic mail except for the following notices which must be sent by United States Postal Service certified mail: termination of contract, contract actions, damage claims, breach notifications, alteration of this paragraph and any other notice which would require a consent, express or implied, or other affirmative action from the State (as opposed to notices of events such as meetings, internet presentations, and the like).

**DVHA Monitoring of the Contract**

The parties agree that the DVHA official State Program Manager is primarily responsible for the review of invoices presented by the Contractor.

9. **Fiscal Year:** Contractor’s fiscal year starts on October 1 and ends on September 30.
10. **Subcontractor Requirements:** Per Attachment C, Section 15, if the Contractor chooses to subcontract work under this agreement, the Contractor must first fill out and submit the Subcontractor Compliance Form (Appendix I – Required Forms) in order to seek approval from the State prior to signing an agreement with a third party. Upon receipt of the Subcontractor Compliance Form, the State shall review and respond within five (5) business days. A fillable PDF version of this Subcontractor Compliance Form is available upon request from the DVHA Business Office. Under no circumstance shall the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Subcontractor Compliance Form to:

Natalie Elvidge, Contracts and Grants Specialist  
[Natalie.elvidge@vermont.gov](mailto:Natalie.elvidge@vermont.gov)

Should the status of any third party or Subcontract change, the Contractor is responsible for updating the State within fourteen (14) days of said change.

**11. Attachments:** This Agreement consists of 26 pages including the following attachments which are incorporated herein:

- Attachment A – Scope of Work to be Performed
- Attachment B – Payment Provisions
- Attachment C – Customary State Contract and Grant Provisions
- Attachment D – Modifications of Insurance
- Attachment E – Business Associate Agreement
- Attachment F – AHS Customary Grant Provisions
- Attachment G – Financial Report & Request for Grant Funds

Order of precedence of these documents shall be as follows:

1. Attachment D – Modifications of Insurance
2. Attachment C – Customary State Contract and Grant Provisions
3. Attachment A – Specifications of Work to be Performed
4. Attachment B – Payment Provisions
5. Attachment E – Business Associate Agreement
6. Attachment F – AHS Customary Grant Provisions
7. Attachment G – Financial Report & Request for Grant Funds
8. Other Agreement Attachments (if any)

**WE, THE UNDERSIGNED PARTIES, AGREE TO BE BOUND BY THIS PROCUREMENT GRANT.**

**BY THE STATE OF VERMONT:**

**BY THE CONTRACTOR:**

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STEVEN COSTANTINO, COMMISSIONER  
AHS/DVHA  
Department of Vermont Health Access (DVHA)  
NOB 1 South, 280 State Drive  
Waterbury, VT 05671  
Email: Steven.Costantino@vermont.gov

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ERIC AVILDSSEN, EXECUTIVE DIRECTOR  
VERMONT LEGAL AID, INC.  
P.O. Box 1367  
Burlington, VT 05402  
Phone: (802) 383-2240

## ATTACHMENT A SCOPE OF WORK TO BE PERFORMED

The purpose of the Medicare Advocacy Project Grant is to increase recoveries from Medicare to offset costs to the Medicaid Program. The Contractor, through its Medicare Advocacy Project, will provide legal and administrative services to secure Medicare reimbursement for dually eligible beneficiaries and provide reimbursement to the State for payment for medical services the Department has made on behalf of beneficiaries where Medicare payment was incorrectly denied.

1. The Contractor will provide appropriate legal and administrative services to secure Medicare reimbursement to the State for payments the State has made on behalf of jointly eligible beneficiaries where Medicare payment was incorrectly denied. Such services will be provided by a project operated by the Contractor known as the Medicare Advocacy Project (MAP). MAP will also provide technical advice as may be necessary and reasonable to the State on substantive legal changes to the Medicare coverage rules and beneficiary appeal rights under federal law, including, but not limited to, Medicare Part D drug coverage, when such changes impact the work of MAP.
2. The Contractor will identify potential recoveries, initiate claims, request reviews, appeals, and legal actions of any type with or against the Secretary of Health and Human Services and her agents in the administration of the Medicare program. The Contractor shall determine which such actions are appropriate and necessary to obtain payment for health care services or supplies under 42 U.S.C. §§ 1395d and 1395k and to prevent improper denials of Medicare coverage of services to individuals who are beneficiaries of both Medicare and Vermont Medicaid.
3. The Contractor will review State-provided records of Medicaid payments to service or supply providers for services or supplies delivered to Medicaid beneficiaries who may also be eligible for Medicare in order to identify cases for pursuit of recovery from Medicare. From time to time, the State may request that the Contractor review specific claims on behalf of dual eligibles of Medicare Part D denials for prescription drug benefits where Medicaid has paid for a dual eligible's prescription drugs due to the beneficiary's demonstration to the State of good cause or hardship. Based on such information and/or requests, the Contractor will initiate appropriate claims, requests for review, appeals and legal actions which, in the exercise of its professional judgment, it deems to have merit and be of sufficient value to warrant expenditure of advocate time in pursuit of recovery. The Contractor will undertake legal action by obtaining authorization directly from the dual eligible beneficiary for the Medicare appeal, or in limited circumstances, MAP may exercise its discretion in bringing appeals under the State's right of subrogation.
4. The administrative services provided by the Contractor will consist of working with health care providers and the State to ensure that full Medicare payment of awards of Medicare coverage obtained through the Contractor's efforts are made to the individual providers as quickly as possible. The Contractor will also ensure that providers make full reimbursement to the State within six months of receipt of Medicare payment in instances where the State has paid for such coverage.
  - a. For all such Medicare payments made to providers during the term of this grant, if full reimbursement is not made within six months of receipt by providers of Medicare payment, the Contractor will provide notification to appropriate agents of the State to allow provider amounts owed to the State to be recouped from providers or adjusted against future provider payments.
  - b. For any such Medicare payments made prior to the term of this grant, the Contractor shall take

all appropriate steps to assure that all reimbursements owed the State are either paid in full or that information regarding such amounts is provided to agents of the State to allow provider amounts owed to the State to be recouped from providers or adjusted against future provider payments.

5. The Contractor will employ sufficient full or part-time staff to carry out its obligations under this grant. At the beginning of the Grant Year, the Contractor will provide the State with a list of names, addresses, and telephone numbers of MAP staff and all other persons employed by the Contractor to fulfill the work requirements of this grant. The Contractor will also notify the State in writing of any changes in personnel as such changes occur.
6. The Contractor will prepare an annual personnel and operating budget which will form the basis for the amount to be paid the Contractor by the State for review, comments, and suggestions as to reasonableness.
7. The Contractor will prepare and submit to the State, semi-annual project performance reports which will include, but not be limited to: a) statistical information on the number of cases opened and closed, and b) the amounts of Medicare recoveries awarded and paid.
8. The Contractor will perform all activities required by this grant according to the principles of caseload control and the Code of Professional Responsibility. The grant neither obligates the Contractor to handle more cases than the limitations of the paragraph would reasonably allow nor to expend funds beyond those paid to it by the State in pursuit of cases referred to it by the State.
9. The Contractor will use all of the funds paid to it by the State under this grant to provide legal services to individuals who are beneficiaries of both Medicare and Medicaid.
10. Failure, on the part of the Contractor, to perform its obligations under this grant may result in the suspension or termination in whole or in part of payments made by the State. The State will provide the Contractor at least 60 days notice in writing of its intention to suspend or withhold any portion or any payment provided for by this grant.
11. The Contractor's performance of its obligation under this grant will be evaluated by the State based on: (a) the number of the Medicare claims appealed or otherwise reviewed by the Medicare fiscal intermediaries and carriers, the Office of Medicare Hearings and Appeals, and any federal court, and (b) the number and dollar value of the reimbursements to the State obtained through the Contractor's efforts.
12. In the event this agreement is suspended, terminated or not renewed, the Contractor will not be required to continue representation without compensation to fulfill its professional obligations to any individual or tribunal or under the Code of Professional Responsibility. The State will arrange for transfer of performance of this grant to itself or a subsequent Contractor as to disrupt as little as possible the continuity of representation in these cases. This provision is not intended to create an automatic right of renewal.
13. The Contractor will take all steps necessary to enable the State to transfer performance of this grant to itself or a subsequent Contractor in the event this agreement is suspended, terminated or not renewed. This includes the preparation of a summary document detailing each active case and identifying all documents, pending activities, and future actions related to each case.
14. Contractor will take steps to ensure that all documents, materials, correspondence, activity logs, case histories, and other information relevant to past and current matters are transferred to the State or a subsequent Contractor in a timely manner and in an acceptable format.

### PERFORMANCE STANDARDS

1. While recognizing that increasing the overall number of cases filed and expanding into additional types of cases for possible Medicare recovery are also important goals, the Subrecipient will strive to open new Medicare recovery cases each calendar year with an overall Medicaid value of 1.5 times the annual dollar amount paid to Subrecipient.
2. The Subrecipient will ensure that providers make full reimbursement to the State within 180 days of the date of a Medicare Decision Notice (favorable or partially favorable). The Subrecipient will provide the State with a monthly report in regards to all providers that fail to make reimbursement to the State within the 180 day time period. This monthly report will detail the providers, reimbursement amounts, interactions with the providers in an attempt to procure the reimbursement, the total amount owed to the State and the completed documents to begin the recoupment process. This monthly report will be due on the 15<sup>th</sup> of each month.
3. The Subrecipient will ensure that the dollar value of the reimbursements to the State obtained by the Subrecipient's efforts is greater or equivalent to the amount paid to the Subrecipient under the grant.

### PERFORMANCE EVALUATION

1. For every performance period of six months in which the Contractor is performing services under the grant, the Contractor will submit its semi-annual project performance reports to the state, which will include:
  - (a) Statistical information on the number of recipient cases opened and closed;
  - (b) Amounts of Medicare recoveries awarded and paid;
  - (c) Detail newly opened cases and the anticipated Medicaid value;
  - (d) Identify Provider education and outreach efforts/activities; and
  - (e) Any other information relating to Contractor's performance under the grant, as requested by the State

These reports are due no more than 60 days following the end of the performance period.

To enable the state to evaluate Contractor's performance over calendar year 2016, Contractor will submit a semi-annual project performance report to the state covering the first six months of calendar year 2016. This report is due no more than 60 days after the expiration of Grant 03410-1105-16 on June 30, 2016.

2. The State will perform an annual evaluation of Contractor's performance for each calendar year. Such evaluation will take place five months after the end of the calendar year. Performance evaluation will examine Contractor's adherence to the Performance Standards listed above over the calendar year. To avoid any ambiguity, the parties agree that the evaluation that will take place in 2017 will examine Contractor's adherence to the Performance Standards listed above over calendar year 2016, which will include Contractor's performance under Grant 03410-1105-16.
3. Subrecipient's failure to submit required reports or to meet the Performance Standards will result in a withholding of payment. Payments to the Contractor will be restored if the State determines that the Contractor has taken sufficient corrective action to meet the required performance standards.

4. The state may reduce payment in the month following a performance evaluation by up to 5% (as determined by the State) of the annual dollar amount paid to the Contractor if the performance evaluation reveals that, in the period of time applicable to the performance evaluation, the dollar value of the reimbursements to the State obtained by the Contractor's efforts was less than the amount paid to the Contractor under the grant. When determining the amount by which to reduce payment, the State will review the Contractor's adherence to the specified performance standards as well as any reduction in the cost to the Medicaid Program for home health services resulting from changes in provider practices attributable to the documented and reported efforts of the Contractor.

**MEDICARE ADVOCACY PROJECT STAFF**  
 (as of April 1st, 2016)

|   |  |
|---|--|
| Michael Benvenuto, Project Director*<br>43 Plains Rd, Jericho, VT 05465<br>(802) 383-2224<br><a href="mailto:mbenvenuto@vtlegalaid.org">mbenvenuto@vtlegalaid.org</a><br>Burlington Office  |  |
| Bill Dysart*<br>88 Blackbird Lane, Charlotte, VT 05445<br>(802) 383-2228<br><a href="mailto:bdysart@vtlegalaid.org">bdysart@vtlegalaid.org</a><br>Burlington Office                         | Sean Londergan*<br>24 East St. # B, Rutland, VT 05701<br>(802) 775-1122 ex 424<br><a href="mailto:slondergan@vtlegalaid.org">slondergan@vtlegalaid.org</a><br>Rutland Office     |
| Carolyn Jarrett*<br>1096 Lightening Ridge Road , Plainfield, VT 05667<br>(802) 223-7990 ex 223<br><a href="mailto:cjarrett@vtlegalaid.org">cjarrett@vtlegalaid.org</a><br>Montpelier Office |  |
| <b>Springfield Office Staff:</b>  |  |
| Jacob Speidel, Staff Attorney*<br>130 Eureka Road, Springfield, VT 05156<br>(802) 885-4604 ex 601<br><a href="mailto:jspeidel@vtlegalaid.org">jspeidel@vtlegalaid.org</a>                   | Leslie Kreek, Paralegal*<br>RR 1, Box 592, Walpole, NH 03068<br>(802) 885-4604, ext. 631<br><a href="mailto:lkreek@vtlegalaid.org">lkreek@vtlegalaid.org</a>                     |
| Charlene Wakefield, MAP Tech<br>617 Davidson Road, Westminster, VT 05158<br>(802) 885-4604, ext.629<br><a href="mailto:cwakefield@vtlegalaid.org">cwakefield@vtlegalaid.org</a>             | Jeanine Farnsworth, MAP Tech<br>13 Clement Road, Springfield, VT 05156<br>(802) 885-4604, ext. 623<br><a href="mailto:jfarnsworth@vtlegalaid.org">jfarnsworth@vtlegalaid.org</a> |

\* part-time employees of MAP

**ATTACHMENT B  
PAYMENT PROVISIONS**

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for services specified in Attachment A, for services actually performed, up to the maximum allowable amount specified in this agreement. 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:

Except as detailed in Performance Evaluation Section of Attachment A, the State will pay Contractor the sum of five hundred and forty-seven thousand, nine hundred eighty-three dollars (\$547,983.00) for the twelve month period from July 1, 2016 through June 30, 2017. This amount will be paid by the State in twelve equal monthly installments of \$45,665.25 payable upon receipt commencing July 1, 2016. Such monthly installments shall be precipitated by a letter of request for payment from the Contractor submitted to:

Natalie Elvidge  
Contract and Grant Management Specialist  
Department of Vermont Health Access (DVHA)  
NOB 1 South, 280 State Drive  
Waterbury, VT 05671

**PERFORMANCE EVALUATION UPON TERMINATION OF GRANT RELATIONSHIP**

1. If this agreement ends or is terminated and the State does not enter into a grant agreement with Contractor for the following fiscal year, the state will withhold payment in the final month of Contractor's performance.
2. Such funds will be made available only when Contractor has submitted its final project performance report and has taken all steps required by the State to ensure a complete transfer of performance of this grant, including (but not limited to) those detailed under Scope of Work items 12-14 in Attachment A, as limited in Item 3, below.
3. The State may reduce its final payment under this grant by up to 5% (as determined by the State) if, according to the State's final performance evaluation, in the period of time applicable to the performance evaluation, the dollar value of the reimbursements to the State obtained by the Contractor's efforts was less than the amount paid to the Contractor under the grant.

Contractor's budget for the operation of the Medicare Advocacy Project during the term of this grant is as follows:

**SFY 2017 Budget**

**Personnel**

|   |    |            |
|---|----|------------|
| Project Director                          | \$ | 44,545.97  |
| Attorneys                                 | \$ | 118,930.46 |
| Lay Advocates and Para Professional Staff | \$ | 103,170.90 |
| Management Professional Staff             | \$ | 49,215.61  |

|                               |                      |
|-------------------------------|----------------------|
| Clerical and Support Services | \$ 21,092.06         |
| <i>Total Salaries</i>         | <u>\$ 336,955.00</u> |

**Fringe Benefits**

|                        |                      |
|------------------------|----------------------|
| <i>Fringe Benefits</i> | <u>\$ 111,592.09</u> |
|------------------------|----------------------|

|                         |                      |
|-------------------------|----------------------|
| <b>Total Personnel:</b> | <u>\$ 448,547.09</u> |
|-------------------------|----------------------|

**Operating Costs**

|   |                     |
|---|---------------------|
| Occupancy                                 | \$ 45,075.83        |
| Office Supplies and Other Office Overhead | \$ 5,552.45         |
| Copiers and Other Office Equipment        | \$ 2,967.21         |
| Computer Services and Support             | \$ 12,531.25        |
| <b>Total Operating:</b>                   | <u>\$ 66,126.74</u> |

**Grant or Contract Specific Expenses**

|                                 |                     |
|---------------------------------|---------------------|
| Travel                          | \$ 4,825.23         |
| Training                        | \$ 2,394.06         |
| Law Library                     | \$ 1,611.25         |
| Other Specific Costs            | \$ 14,719.95        |
| <b>Total Specific Expenses:</b> | <u>\$ 23,550.49</u> |

**Administrative Overhead**

|                                       |                    |
|---------------------------------------|--------------------|
| Administrative Support Expenses       | \$ 6,843.34        |
| Depreciation                          | \$ 2,915.34        |
| <b>Total Administrative Overhead:</b> | <u>\$ 9,758.68</u> |

|                     |                             |
|---------------------|-----------------------------|
| <b>TOTAL COSTS:</b> | <u><u>\$ 547,983.00</u></u> |
|---------------------|-----------------------------|

## 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 \$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.

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 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as

amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. 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 – Attachment C - 9-1-2015\_rev)

**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 **Department of Vermont Health Access** (“Covered Entity”) and **Vermont Legal Aid** (“Business Associate”) as of **July 1, 2016** (“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.

**ATTACHMENT F**  
**AGENCY OF HUMAN SERVICES' CUSTOMARY GRANT PROVISIONS**

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the grant for provider performance using outcomes, processes, terms and conditions agreed to under this grant.
2. **2-1-1 Data Base:** The Grantee 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 Grantee 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 Grantees:**

Inspection of Records: Any grants 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 Grantee or subgrantee.

Subcontracting for Medicaid Services: Having a subcontract does not terminate the Grantee, 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 Grantee or subgrantee and provide for revoking delegation or imposing other sanctions if the Grantee or subgrantee's performance is inadequate. The Grantee 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 grants and subgrants between the Grantee and service providers.

Medicaid Notification of Termination Requirements: Any Grantee 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 Grantee 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 Grantees 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 Grantee 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 Grantees and subgrantees receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Grantee 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 Grantee 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 Grantee will assure a drug-free workplace in accordance with 45 CFR Part 76.
7. **Privacy and Security Standards.**

Protected Health Information: The Grantee 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 grant. The Grantee 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 Grantee or subgrantee 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 Grantee agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Grantee 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 Grantee shall ensure that all of its employees and subgrantees 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 Grantee 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 Grantee 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 Grantee will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Grantee holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Grantee 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 Grantee 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 Grantee 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 Grantee or subgrantee, shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

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

If the Grantee is operating a system or application on behalf of the State of Vermont, then the Grantee 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 Grantee's materials.

11. **Security and Data Transfers.** The State shall work with the Grantee 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 Grantee of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Grantee to implement any required.

The Grantee 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 Grantee 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 Grantee 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 Grantee shall securely delete data (including archival backups) from the Grantee's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

12. **Computing and Communication:** The Grantee 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 Grantee as part of this agreement. Options include, but are not limited to:
1. Grantee's provision of certified computing equipment, peripherals and mobile devices, on a separate Grantee'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 Grantee.

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 Grantee 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 grantee 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.

Grantees 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.

**APPENDIX 1: REQUIRED FORMS**  
**Department of Vermont Health Access Subcontractor Compliance**

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

Original Contractor/Grantee Name: \_\_\_\_\_

Contract/Grant #: \_\_\_\_\_

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

Scope of Subcontracted Services: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is any portion of the work being outsourced outside of the United States?  YES  NO  
(If yes, do not proceed)

All vendors under contract, grant, or agreement with the State of Vermont, are responsible for the performance and compliance of their subcontractors with the Standard State Terms and Conditions in Attachment C. This document certifies that the Vendor is aware of and in agreement with the State expectation and has confirmed the subcontractor is in full compliance (or has a compliance plan on file) in relation to the following;

- Subcontractor does not owe, is in good standing, or is in compliance with a plan for payment of any taxes due to the State of Vermont
- Subcontractor (if an individual) does not owe, is in good standing, or is in compliance with a plan for payment of Child Support due to the State of Vermont.
- Subcontractor is not on the State's disbarment list.

In accordance with State Standard Contract Provisions (Attachment C), The State may set off any sums which the subcontractor owes the State against any sums due the Vendor 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 in Attachment C.

\_\_\_\_\_  
Signature of Subcontractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Vendor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Received by DVHA Business Office

\_\_\_\_\_  
Date