

STATE OF VERMONT GRANT AGREEMENT				Part 1-Grant Award Detail			
SECTION I - GENERAL GRANT INFORMATION							
<sup>1</sup> Grant #: 03410-1690-17				<sup>2</sup> Original <input checked="" type="checkbox"/>		Amendment # <input type="checkbox"/>	
<sup>3</sup> Grant Title: 2016 Summit Grant Award							
<sup>4</sup> Amount Previously Awarded: \$0.00		<sup>5</sup> Amount Awarded This Action: \$197,505.00		<sup>6</sup> Total Award Amount: \$197,505.00			
<sup>7</sup> Award Start Date: 07/01/2016		<sup>8</sup> Award End Date: 12/31/2016		<sup>9</sup> Subrecipient Award: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>			
<sup>10</sup> Vendor #: 212495		<sup>11</sup> Grantee Name: Vermont Information Technology Leaders, Inc. (VITL)					
<sup>12</sup> Grantee Address: 1 Mill Street							
<sup>13</sup> City: Burlington			<sup>14</sup> State: VT		<sup>15</sup> Zip Code: 05601		
<sup>16</sup> State Granting Agency: DVHA					<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: \$0.00		Description:			
<sup>20</sup> If this action is an amendment, the following is amended: Amount: <input type="checkbox"/> Funding Allocation: <input type="checkbox"/> Performance Period: <input type="checkbox"/> Scope of Work: <input type="checkbox"/> Other: <input type="checkbox"/>							
SECTION II - SUBRECIPIENT AWARD INFORMATION							
<sup>21</sup> Grantee DUNS #: 512301296			<sup>22</sup> Indirect Rate: 10.00 %		<sup>23</sup> FFATA: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		
<sup>24</sup> Grantee Fiscal Year End Month (MM format): 6			(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	<sup>27</sup> Awarded Previously	<sup>28</sup> Award This Action	<sup>29</sup> Cumulative Award	<sup>30</sup> Special & Other Fund Descriptions			
General Fund			\$0.00				
Special Fund			\$0.00				
Global Commitment (non-subrecipient funds)		\$90,220.28	\$90,220.28				
Other State Funds			\$0.00				
FEDERAL FUNDS (includes subrecipient Global Commitment funds)						Required Federal Award Information	
<sup>31</sup> CFDA#	<sup>32</sup> Program Title	<sup>33</sup> Awarded Previously	<sup>34</sup> Award This Action	<sup>35</sup> Cumulative Award	<sup>36</sup> FAIN	<sup>37</sup> Fed Award Date	<sup>38</sup> Total Federal Award
93.778	Medicaid Assistance Program		\$107,284.72	\$107,284.72			
<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:					
Total Awarded - All Funds		\$0.00	\$197,505.00	\$197,505.00			
SECTION IV - CONTACT INFORMATION							
<sup>41</sup> STATE GRANTING AGENCY				<sup>42</sup> GRANTEE			
NAME: Richard Terricciano				NAME: John Evans			
TITLE: Associate HIT Coordinator				TITLE: CEO & President			
PHONE: (802) 585-0862				PHONE: (802) 861-1935			
EMAIL: Richard.Terricciano@vermont.gov				EMAIL: JEvans@vitl.net			

## Part 2 – Grant Agreement

1. **Parties:** This is an agreement for services between the State of Vermont, Department of Vermont Health Access (hereafter called “State”), and Vermont Information Technology Leaders, Inc. with a principal place of business at 1 Mill St., Suite 249, Burlington VT 05401 (hereafter called “Subrecipient”). It is the Subrecipient’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Subrecipient is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter:** The subject matter of this Grant Agreement is the presentation of the Vermont Health Information Exchange (VHIE) Summit 2016. Detailed services to be provided by the Subrecipient 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 Subrecipient, the State agrees to pay the Subrecipient, per payment provisions specified in Attachment B, a sum not to exceed \$197,505.
5. **Grant Term:** The effective date of this Grant Agreement shall be July 1, 2016 and end on December 31, 2016. Work performed between July 1, 2016 (retroactive date) and the execution of this agreement that is in conformity with Attachment A may be billed under this agreement. The Subrecipient 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. The Subrecipient 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, Subrecipient is agreeing to the application of all terms of this grant to that period and to that work. Subrecipient 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. Subrecipient 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 Subrecipient for the work in question.
6. **Source of Funds:** Global Commitment      \$ 197,505
7. **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 Subrecipient.
8. **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 Subrecipient, 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 Subrecipient 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 Subrecipient from State revenues.

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

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>	<u>For the Subrecipient</u>
Name:	Meaghan Kelley	Richard Terricciano	John Evans
Phone #:	802-241-0393	802-585-0862	802-861-1935
E-mail:	meaghan.kelley@vermont.gov	Richard.Terricciano@vermont.gov	Jevans@vitl.net

**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:

	<b>STATE REPRESENTATIVE</b>	<b>SUBRECIPIENT</b>
Name	Office of General Counsel	John Evans
Address	NOB 1 South, 280 State Drive Waterbury, VT 05671	1 Mill Street, Suite 249 Burlington, VT 05401
Email	<u>Howard.Pallotta@vermont.gov</u>	<u>JEvans@vitl.net</u>

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.

**Department of Vermont Health Access (DVHA) MONITORING OF CONTRACT**

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

**10. Fiscal Year:** Subrecipient's fiscal year starts on July 1 and ends on June 30.

**11. Subcontractor Requirements:** Per Attachment C, Section 19, if the Subrecipient chooses to subcontract work under this agreement, the Subrecipient 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 completed Subcontractor Compliance Form, the State shall review and respond within five (5) business days with approval or if additional information is needed. Approval of a subcontract may be contingent upon the State's review of the proposed subcontract agreement. The Subrecipient shall be fully responsible for any work completed by its contractors and consultants. All work performed by subcontractors and consultants is subject to all conditions and requirements included in this Agreement. For vendors that have been previously approved as a subcontractor by the State, and that have been procured utilizing a competitive RFP process where applicable, the State shall expedite re-approval of the Subrecipient extending its previously approved services with these known vendors. The Subrecipient shall notify the State utilizing the Subcontractor Compliance Form upon renewal of any subcontract.

Under no circumstance may the Subrecipient enter into a sub-agreement without prior authorization from the State. The Subrecipient shall submit the Subcontractor Compliance Form to:

Meaghan Kelley, Grant Manager: Meaghan.Kelley@vermont.gov

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

**12. Attachments:** This Agreement consists of 30 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
- Appendix I – Required Forms

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. Other Agreement Attachments (if any)

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

**BY THE STATE OF VERMONT:**

**BY THE CONTRACTOR:**

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STEVEN COSTANTINO, COMMISSIONER  
AHS/DVHA  
NOB 1 South, 280 State Dr.  
Waterbury, VT 05671-1010  
802-879-5901  
Steven.Costantino@vermont.gov

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JOHN K. EVANS, CEO  
VERMONT INFORMATION TECHNOLOGY LEADERS, INC.  
1 Mill St., Suite 249  
Burlington VT 05401  
802-861-1935  
jevans@vitl.net

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

This Agreement is for the 2016 Vermont Health Information Exchange (VHIE) Summit (“Summit”) conference to be hosted on October 5-6, 2016.

The conference is on the exchange of clinical health data and health information technology, in general. The Summit brings together a diverse audience of health industry professionals from the New England region and nationally, for the purpose of delivering timely and relevant information on topics such as the use and exchange of clinical health data, meaningful use of electronic health record systems, and health care policy. The Summit is an important vehicle for sharing knowledge with various constituencies about the VHIE and the services that are derived from the strategic investment in the VHIE.

Specific tasks:

1. The Subrecipient shall offer Continuing Medical Education (CME) credits to the following professions:
  - Physicians (American Medical Association Category 1, AAFP)
  - Nurses
  - Nurse Practitioners
  - Social Workers (National Association of Social Workers)
  - Physical Therapists
  - Nursing Home Administrators
2. The Subrecipient shall offer a two-day program to educate both providers and health care consumers about the benefits of active engagement with health care technology and health data. Therefore, the 2016 program will include the following topics that will educate providers about the VHIE, how to access data on the VHIE, and how the VHIE can be used to support clinical decision making. The theme of this year’s Summit is Navigating the Health IT Landscape and will feature sessions in the following tracks:
  - Governing Health IT through Public Policy
  - Laying the Course for Coordinated Patient Care
  - Measuring Care, Quality and Outcomes with Data
  - Hot Topics in Health IT

Program sessions will include a mix of presentation styles and formats. The program plan will include hands-on workshops, entrepreneurial showcases, opportunities for networking, and idea sharing sessions, as well as styles that have been utilized in the past: lectures, informal interviews, panel discussions, and moderated question and answer.

This Program must be approved, in writing, by the State. The State shall approve, or request additional information regarding the Program, within 5 business days of receipt.

3. The Subrecipient shall develop outreach materials to solicit attendees to the Summit. These include website content, email texts, social media postings, etc. These outreach materials must be approved, in writing by the State. The State shall approve, or request additional information

regarding the outreach materials, within 5 business days of receipt. The State shall distribute email communications regarding the Summit.

4. Conduct a Summit evaluation for attendees. The Subrecipient will provide the results of this evaluation to the State within 10 days of the Summit.

**Reporting and Deliverables:**

- a. The following items will be provided to the State no later than the dates listed:
  - i. As developed: Publicity and Outreach materials such as website content, email texts, social media postings, etc.
  - ii. August 15, 2016
    1. Preliminary agenda with session descriptions.
  - iii. August 31, 2016
    1. Final agenda with session descriptions, course abstracts and learning objectives.
  - iv. September 15, 2016
    1. Free registration for use by up to 10 State employees designated by the Commissioner of the State's Department of Vermont Health Access (DVHA). State shall provide a list of attendees to be registered.
    2. Email #1 text for distribution to appropriate State Agency of Human Services (AHS) employees.
    3. Email #1 text for distribution to providers known to AHS.
  - v. September 30, 2016
    1. Session evaluation questionnaires.
    2. Post-event survey questionnaires.
  - v. October 1, 2016
    1. Subcontractor approval forms with financial table (Appendix I) for Summit speakers.
- b. Within 10 days of the end of each month, the Subrecipient shall provide a report listing the following:
  - i. Number of registered attendees, and
  - ii. Number and names of event exhibitors and sponsors.
- c. Within 60 days following the event, the Subrecipient shall provide the following:
  - i. Complete registration summary of total number of attendees who registered, the number of attendees who checked in, and the number of no-shows.
  - ii. Report of all session evaluations completed by attendees.
  - iii. Report of the post-event satisfaction surveys for attendees, speakers, and sponsors/exhibitors.
  - iv. Links to all video, photographic, and audio recordings of the event.

**Ensuring Appropriate Use of Federal Monies**

- Both parties recognize the significance of the federal grant funding for this project. More specifically, both parties recognize the limitations of funding because of the use of federal grant monies. Both parties agree to comply with the terms and conditions under 45 C.F.R. § 75. The State will only reimburse the Subrecipient for allowable costs under 45

C.F.R. § 75. By signing this agreement, the Subrecipient is attesting that they have a full comprehension of 45 C.F.R. § 75.

- To protect grant funds from federal disallowance and recovery from the State or the Subrecipient, the Subrecipient will comply with the following:
  - Work invoiced by the Subrecipient for the purpose of expending funds against this Grant will include only work defined in Attachment A of this Grant.
  - Subrecipient shall provide written notification to the State upon entering into a contractual relationship for work defined by this Agreement to be performed by another entity by completing the Subcontractor Approval Form in Appendix I.
  - The State reserves the right to audit the Subrecipient to ensure compliance with State and Federal regulations, including the cost allocation methodologies referenced below.
  - The Subrecipient must separate accounting between projects to the extent it has different sources of funding for projects.
  - Any work performed outside of the direction of the State will not be reimbursed. The State contact to authorize direct work under this agreement is the State's representative referenced on Page 1, Section 9 of this Agreement.
- The Subrecipient is responsible for compliance to any and all other applicable federal regulations or guidelines specific to supporting the funding defined in this agreement.

**ATTACHMENT B  
 PAYMENT PROVISIONS**

The State shall pay the Subrecipient for work performed as described in Attachment A in conjunction with the Subrecipient’s budget set forth below. The maximum payable amount under this Grant shall not exceed \$197,505.

The maximum dollar amount payable under this Agreement is not intended as any form of a guaranteed amount. The Subrecipient will be paid for products, services, and allowable costs actually performed, expended, and properly allocated as specified in Attachment A, 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 State of Vermont’s payments terms are Net 10 days from date of invoice.

Invoices shall include an invoice number, date of submission, dates of service, the Agreement number, total amount billed broken down into budget categories and accompanied by a General Ledger detail for the expenditures invoiced, and shall be signed by an authorized representative of the Subrecipient. Invoices and Monthly expenditure reports shall be submitted to: Meaghan Kelley, Grants Management Specialist [Meaghan.Kelley@vermont.gov](mailto:Meaghan.Kelley@vermont.gov)

In the event that the State and the Subrecipient negotiate an indirect rate that covers the period of performance under this agreement, both parties will amend the budget in this grant agreement to reflect the approved indirect rate.

Budget Item	Cost (\$)	Type of Payment
<b>Direct costs</b>		
Direct Labor	31,100	Direct cost allocation to this cost center for Subrecipient staff working on the 2016 Summit
Direct Fringe	10,955	Fringe rate based on labor estimate. Actuals will be billed.
Printing and postage	10,500	Actual and incurred
Staff travel and lodging	2,155	Only for staff normally reimbursed for travel to/from Subrecipient’s Burlington Office. Actual and incurred
Guidebook/Twitterwall	2,775	Actual and incurred
Supplies	3,500	Actual and incurred
<b>Sub-contracted costs</b>		
Venue cost (subcontracted)	65,500	Actual and incurred
Event Management (subcontracted)	41,365	Actual and incurred
Recording and photography	5,750	Actual and incurred
Speaker Travel and Lodging	2,950	Actual and incurred
CME Application	3,000	Actual and incurred

<b>Total Cost</b>	<b>\$179,550</b>	
<b>Indirect rate – 10%</b>	<b>\$17,955</b>	
<b>TOTAL</b>	<b>\$197,505</b>	

By including the aforementioned categories of allowable expenses, it is not to be construed as an affirmative or tacit approval of all expenditures under each category to be determined allowable by the State. The categories of allowable expenses must be in conformity with this Agreement and must be allowable under Federal regulations in order to be reimbursed by the State. The Subrecipient shall bear the financial risk of submission of claims that are not in conformity with this Agreement or not allowed under Federal regulations.

A year-end reconciliation will be conducted by both parties to review payments, review outstanding invoices, and review overall budgetary concerns. The year-end reconciliation shall occur for the period ending 12/31/16.

In the event that additional or alternative funds are awarded to the Subrecipient to pay for duplicative items detailed in the scope of work detailed in Attachment A, or allocated as indirects in the budget approved in Attachment B, whether through State funds or any other source, the Subrecipient may no longer bill for this scope of work or allocate costs under this Agreement.

A final expenditure report is due no later than 90 days after the end of this grant agreement, per 45 CFR Part 75, and will be reconciled to actual costs incurred from July 1, 2016 through December 31, 2016. Any overpayment of expenses will be returned to the State no later than March 31, 2017.

In-State travel mileage reimbursement shall not exceed the State approved mileage rates at the time at which the expense was incurred. The Subrecipient is responsible for submitting invoices in compliance with the current mileage rates, which change periodically in accordance with the federal mileage rate, which is typically adjusted each calendar year. Proper documentation of mileage shall include name of individual traveling, number of miles traveled, starting and ending locations, and dates of travel.

As of January, 2016, the State approved mileage rate is \$0.54 per mile. Current rates can be found at: [http://humanresources.vermont.gov/salary/compensation/expense\\_reimbursement](http://humanresources.vermont.gov/salary/compensation/expense_reimbursement). If mileage reimbursement is requested, the Subrecipient shall provide documentation in the invoice to support this request. Documentation should comply with the Subrecipient Travel Policies in addition to any federal funding regulations as it relates to travel expenditures.

The Subrecipient shall submit a copy of its Travel Policies to the State no later than 90 days after execution of this agreement.

The Subrecipient shall maintain a running accounting of invoicing to date for each project/category in the agreement compared with the total amount per the agreement, which will be represented in the monthly expenditure reports.

As a responsible steward of federal funding, the State monitors its Subrecipients, which may

include but is not limited to:

- i. Ensuring that Subrecipient is not disbarred/suspended or excluded for any reason.
- ii. Executing a sub-award agreement.
- iii. Engaging in Subrecipient meetings and regular contact with Subrecipients.
- iv. Requiring pre-approval for changes to budget or scope of grant.
- v. Requesting quarterly financial reports.
- vi. Requesting monthly and quarterly programmatic reports.
- vii. Engaging in a paper or site audit.
- viii. Engaging in desk reviews.

The State emphasizes clear communication and dialogue that supports Subrecipients in maintaining compliance with federal requirements. The State may at any time elect to conduct Subrecipient monitoring. Subrecipient is required to maintain grant records accurately for the State's review under 45 CFR Part 75.

**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS  
REVISED JULY 1, 2016**

- 1. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.
- 2. Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.
- Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.
- 4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.
- 7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only

upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees 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 or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

**8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of 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. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and

its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

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

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. 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.

**B. Internal Controls:** In the case that this Agreement is a Grant 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).

**C. Mandatory Disclosures:** In the case that this Agreement is a Grant 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.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

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

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

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

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date 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.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

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

**19. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

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

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

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

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**23. 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.

**24. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**25. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**26. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**27. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.
- C. No Implied Waiver of Remedies:** A party’s delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**29. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**30. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**31. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party’s performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an “AS IS, WHERE IS” basis, with no warranties whatsoever.

**32. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

**ATTACHMENT D  
MODIFICATION OF CUSTOMARY PROVISIONS  
OF  
ATTACHMENT C OR ATTACHMENT F**

**1. The insurance requirements contained in Attachment C, Section 8 are hereby modified:**

Notwithstanding the language in Attachment C, Section 8, the following language replaces Section 8 in its entirety:

**8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of 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. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

\$3,000,000 First Party Breach Coverage

Professional Liability Coverage:

\$2,000,000 Each Occurrence

\$4,000,000 General Aggregate

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability, Professional Liability, and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies,

departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**APPROVAL:**

  
\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL

DATE: 10/8/16

*State of Vermont – Attachment D*  
*Revised AHS – 12-08-09*

**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 Information Technology Leaders, Inc. (“Business Associate”) as of July 1, 2017 (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

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

The parties agree as follows:

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

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

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

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

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

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

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

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

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

**2. Identification and Disclosure of Privacy and Security Offices.** Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity’s contract/grant manager the names and contact information of both the HIPAA Privacy

Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

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

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

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

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

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

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

**6. Documenting and Reporting Breaches.**

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its

employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

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

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

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

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

8. **Providing Notice of Breaches.**

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

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered

Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

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

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

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

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

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

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

**12. Accounting of Disclosures.** Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such

information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

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

**14. Termination.**

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

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

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

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

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

**16. Penalties and Training.** Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in

notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

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

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

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

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

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

**18. Miscellaneous.**

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

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

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

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

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

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

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

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 5/5/15)

**ATTACHMENT F**  
**AGENCY OF HUMAN SERVICES' CUSTOMARY 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 technical and non-technical information (excluding data that is owned by providers), 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 I – Required Forms**

**Department of Vermont Health Access  
Subcontractor Compliance**

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

Original Contractor/Grantee Name: \_\_\_\_\_ Contract/Grant #: \_\_\_\_\_

Subcontractor Name: \_\_\_\_\_ Dollar Amount: \_\_\_\_\_

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.

- Subcontract requested by the State (to be completed by the State).

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

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

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

**Required: Contractor cannot subcontract until this form has been returned by the DVHA Contracts & Grants Unit**