

REQUEST-FOR-PROPOSALS

- DEVELOP AND IMPLEMENT A COMPREHENSIVE -

- OUTREACH AND ENROLLMENT STRATEGY -

As established by Vermont's Health Care Reform Legislation

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SECTION 1: VERMONT CONTEXT

1.1 INTRODUCTION

The State of Vermont (“State”), Agency of Human Services (AHS), Office of Vermont Health Access (OVHA), is issuing this Request for Proposals (RFP) to procure services to develop and implement a comprehensive outreach and enrollment strategy across a continuum of solutions for the uninsured, using a unified marketing campaign with specialized messages for specific populations and broader audiences as established by Vermont’s Health Care Reform legislation.

The 2011 Strategic Goal: More than 96% of Vermonters will have health insurance coverage.

1.2 VERMONT’S HEALTH CARE REFORM

On May 25, 2006, Vermont Governor James Douglas signed into law Acts 190 and 191 (Acts Relating to Health Care Affordability for Vermonters). These Acts establish the foundation for Vermont’s Health Care Reform Plan and establish the context for this RFP.

Vermont’s health care reform is one of the nation’s most comprehensive efforts to simultaneously improve quality of care, contain cost, and increase access to comprehensive and affordable health care coverage for all Vermonters. This reform is the product of extensive negotiation and collaboration by the Governor, the Vermont General Assembly, and multiple stakeholders concerned about Vermont’s health care system. To be successful, Vermont needs an aggressive and comprehensive education, outreach and enrollment effort to ensure coverage of the uninsured.

Vermont’s overall uninsured rate is 9.8% (61,000) of its population, which includes 4.9% of the state’s children (up to age 18). The Health Care Affordability Act set a minimum goal of a 96% insured rate by 2010 – an increase of 36,000 covered lives. The ultimate goal is universal coverage for all citizens. While Vermont’s numbers are relatively small, we are challenged by already having such a high coverage rate (i.e. we need to reach people who may have intentionally chosen not to access coverage).

While other states have developed initiatives to expand coverage, most are struggling to reach their enrollment projections. In addition, many states are focusing on one particular coverage strategy rather than a broad spectrum of reforms. As described below, Vermont’s reform has a combination of elements that can lead to successful universal coverage, and a successful Vermont experience will be a useful model for other states desiring to decrease their uninsured.

Fortunately, Vermont has detailed data from the 2005 Vermont Family Health Insurance Survey on uninsured Vermonters that will be integral to focus education, outreach and

enrollment efforts. The Survey provides demographic data including age, income, employment status, family composition, geographic location and reasons for not having coverage. For example, 51% of the uninsured are eligible for a Medicaid program but not enrolled; 27% have household income under 300% of the federal poverty level (FPL) but are ineligible for a Medicaid program; and 22% have household income greater than 300% of FPL. While only 4.9% of Vermont children under age 18 are uninsured, over 60% of uninsured children are between the ages of 11 and 17 and about 75% live with adults who are employed. For young adults ages 18-21 only 44% who are eligible for some form of Medicaid are actually enrolled leaving 56% eligible but unenrolled.

The Health Care Affordability Act includes multiple initiatives designed to appeal to the spectrum of the uninsured. A new insurance product, the Catamount Health Plan, is designed to make affordable and comprehensive commercial coverage available to all uninsured Vermonters by October 1, 2007. Also, the State will provide premium assistance on a sliding scale basis to Catamount enrollees with incomes under 300% FPL (*Catamount Health Assistance Program*).

To encourage more enrollment in public health programs, premiums are being reduced for the Vermont Health Access Plan (VHAP), which is the Medicaid expansion program for adults up to 185% FPL, and for Dr. Dynasaur, the State's coverage for children up to age 18 in households up to 300% FPL.

Premium assistance also will be provided to existing VHAP enrollees and new VHAP eligibles, and to those not eligible for VHAP with incomes under 300% FPL, to enroll in their employer sponsored insurance plan (*ESI Premium Assistance Programs*).

In addition, Vermont is initiating reforms to make the non-group market more appealing and affordable by instituting a Non-Group Market Trust to decrease premium costs by 5% to 15%. Finally, an Employer Contribution assessment fee is being initiated in April, 2007 to help fund these reforms, and to promote universal coverage for all Vermonters.

There also is a very strong commitment to proceed with health care reform in a collaborative, non-partisan manner. We have broad stakeholder support and involvement, including state officials from the agencies/departments that oversee Medicaid; Human Services; Children and Families; Health; and Banking, Insurance and Health Care Administration; as well as leaders from the business, organized labor, insurance, health care provider and health care advocacy communities. All of these stakeholders are integral to the development and implementation of a comprehensive and integrated strategy for education, outreach and enrollment and are committed to using their resources to ensure success.

Detailed information about Vermont's Healthcare Reform can be accessed at:
<http://hcr.vt.gov/>

Vermont Health Care Reform, Five-Year Implementation Plan (December 1, 2006) can be accessed at: http://hcr.vt.gov/five_year_implementation_plan

Bidders are strongly encouraged to read the document and specifically the section “Improve Outreach to Uninsured” on pages 18-19.

The *Employer-Sponsored Premium Assistance Report* (November 22, 2006) can be accessed at: <http://ovha.vermont.gov/news-info/news/esi>
Bidders are strongly encouraged to read the document.

The *2005 Household Health Insurance Survey* can be accessed at:
<http://www.bishca.state.vt.us/>

The Bi-State Primary Care Association drafted the *Report on Medicaid and Catamount Outreach* (November 15, 2006) which includes analysis of current outreach and enrollment strategies and makes recommendations for improvement. The recommendations in this report form the basis for this RFP. The *Report on Medicaid and Catamount Outreach* (November 15, 2006) can be accessed at:
<http://www.bistatepca.org/Bi-State%20Reports.htm>
Bidders are strongly encouraged to read the document.

1.2.1 Director of Health Care Reform Implementation

Act 191 designated the Agency of Administration as the lead entity for coordinating implementation of Vermont’s health care reform across the multiple departments within State government. The Director of Health Care Reform Implementation is charged with this responsibility within the Agency of Administration. The bidder selected in response to this RFP will have direct contact with this Director during the project implementation.

1.2.2 Department of Banking, Insurance, Securities, and Health Care Administration (BISHCA) - Division of Health Care Administration

The Division of Health Care Administration (HCA) is the State’s health care oversight authority. HCA reviews insurance policies and proposed health insurance premium rates in the private health insurance market in Vermont, including individual and small group, large group and Medicare Supplements. HCA oversees a program in consumer protection and quality assurance, and reviews the performance of all HMOs licensed to operate in Vermont for compliance with professional standards for quality of care. In addition, HCA administers the annual binding budget program for all Vermont hospitals in an effort to monitor and control increases in hospital costs and administers the Certificate of Need (CON) program to ensure that licensed health care facilities and services are necessary, non-duplicative and distributed fairly throughout the state. HCA offers a range of consumer assistance, including educational publications, lists of carriers and rates, complaint resolution services, and external appeals of denial of benefits. HCA administers or directs the creation of numerous health care databases to support analyses

of Vermont health care expenditures, Vermont's health insurance market, hospital utilization and budgets, certificate of need applications, access to insurance coverage, hospital effectiveness and efficiency and other health care topics. This includes the BISHCA Household Insurance Survey referenced in Section 1.2.

Within Vermont's Health Care Reform Initiatives related to this RFP, HCA is responsible for developing the rules regarding the new Catamount Health Plan and for overseeing implementation of the Plans by the commercial carriers. HCA also is leading the efforts to reform the non-group market to make it more affordable for Vermonters.

BISHCA's website can be accessed at: <http://www.bishca.state.vt.us/>

1.2.3 Outreach and Enrollment Steering Committee

The State has formed an Outreach and Enrollment Steering Committee to inform all efforts described in Section 2.1. The Steering Committee is comprised of State representatives from key departments and external stakeholders. The Steering Committee meets on a regular basis. The bidder selected in response to this RFP also will meet with this Committee as necessary to inform the development and implementation of the Outreach and Enrollment Plan (see Section 2.1.1).

1.3 VERMONT MEDICAID

The Agency of Human Services (AHS) is the single State agency for Federal Medicaid payments made to the State of Vermont. Managerially, the Medicaid program is delegated to the Office of Vermont Health Access (OVHA).

Other departments within AHS also participate in Medicaid program service delivery, policy definition, and cost-sharing. The involvement of these other departments varies from management of waiver programs to delivery of case management services, and from a focus on certain provider types and beneficiary populations to responsibility for Federal reporting and nursing home rate-setting.

The State of Vermont carried out a broad-based reform of its Medicaid program in 1995, through implementation of a Section 1115(a) Research and Demonstration Waiver, called the Vermont Health Access Plan, or VHAP. Under the VHAP Waiver, traditional Medicaid beneficiaries were enrolled on a mandatory basis in managed care, and the resulting savings were used to provide coverage to two expansion populations – uninsured adults with incomes up to 150% of the Federal Poverty Level (FPL) and parents and caretaker relatives up to 185% of FPL who are provided a medical benefit, and elderly or disabled Vermonters with incomes up to 175% of FPL who were provided a pharmacy benefit. Although the State contracted with commercial managed care plans for medical benefit coverage in the early years of the demonstration VHAP Waiver, all beneficiaries who are required to enroll in managed care are now enrolled in a State-operated primary care case management program (PCCM) called *PC Plus*.

The AHS website (with links to AHS departments) can be accessed at:
<http://humanservices.vermont.gov/>

The AHS organizational chart can be accessed at:
<http://humanservices.vermont.gov/publications/ahs-organizational-chart>

Global Commitment to Health Waiver

During the fall of 2005, the State received approval from the Centers for Medicare and Medicaid Services (CMS) for a Section 1115 Medicaid Waiver known as “Global Commitment to Health Waiver”. The Waiver allows the State to fundamentally restructure the Medicaid program and imposes a cap on the amount of federal funding available for acute care services for the Medicaid population. The State exchanged the risk of operating under a capped funding arrangement for the opportunity to use federal Medicaid funds for non-Medicaid health programs.

The goals of the Waiver include:

1. Financial and programmatic flexibility to help maintain public health care coverage and provide for more effective services.
2. To lead in exploring new ways to reduce the number of uninsured.
3. Foster innovation within health care by focusing on health care outcomes.

The five-year Waiver term began effective October, 2005, and allows the State to deviate from traditional federal Medicaid law and regulations in the following key ways:

1. Imposes a global cap on federal funds.
2. Establishes the OVHA as a managed care organization.
3. Allows the State to use federal Medicaid funds for state fiscal relief and non-Medicaid health programs.
4. Provides flexibility to reduce benefits, increase cost sharing, and limit enrollment for optional and expansion populations with some limits.

An amendment to the Global Commitment to Health Waiver was submitted to the Centers for Medicare and Medicaid Services (CMS) on September 11, 2006. The amendment seeks federal authority to undertake the following initiatives:

VHAP-ESI – Vermont proposes to implement an Employer Sponsored Insurance (ESI) program for both existing and new VHAP enrollees. Beneficiaries will be held harmless in terms of cost and benefits compared to the regular VHAP program. The savings generated by this initiative will be used to finance coverage for additional low-income, uninsured Vermonters.

Expanded ESI Premium Assistance Program – Vermont intends to make coverage more affordable for uninsured individuals with incomes up to 300 percent of FPL. Individuals who have access to coverage through their employers will have the opportunity to participate in the ESI Premium Assistance Program. Public subsidies will be available

under this program to help cover the employee share of monthly premiums for employer-sponsored coverage.

Catamount Health Assistance Program – Catamount Health is a broad initiative designed to make affordable commercial coverage accessible to individuals unable to obtain coverage through their employers. Covered benefits will be defined by the State and provided through commercial carriers. Catamount Health will be available to all Vermonters, regardless of income. The Catamount Health Assistance Program would provide for public subsidies toward the premiums paid under Catamount Health. The Catamount Health Assistance Program will be available to low-income uninsured Vermonters with incomes up to 300 percent of the FPL who do not have access to employer-sponsored insurance that is more cost-effective for the State.

Global Commitment to Health Waiver documents can be accessed at:
<http://ovha.vermont.gov/globalcommitment/>

1.3.1 Office of Vermont Health Access (OVHA)

The Office of Vermont Health Access (OVHA) sits within the Agency of Human Services (AHS) and is the State office responsible for the management of Medicaid, the State Children's Health Insurance Program (SCHIP), and other publicly funded health insurance programs in Vermont. The OVHA is the largest insurer in Vermont in terms of dollars spent and the second largest insurer in terms of covered lives.

The mission of the OVHA is to:

- Assist beneficiaries in accessing clinically appropriate health services.
- Administer Vermont's public health insurance system efficiently and effectively.
- Collaborate with other health care system entities in bringing evidence based practices to Vermont Medicaid beneficiaries.

The OVHA is the entity responsible for implementing the new *ESI Premium Assistance Programs and the Catamount Health Assistance Program*. In addition, the BISHCA Household Insurance Survey indicates that approximately 50% of the uninsured in Vermont are eligible for but not enrolled in the existing Medicaid / VHAP / Dr. Dynasaur programs. This RFP is being issued and administered by the OVHA because of OVHA's key role in the State's initiatives to increase coverage for the uninsured.

The OVHA website can be accessed at: <http://ovha.vermont.gov>

The OVHA's Budget Document for State Fiscal Year (SFY) 2007 can be accessed at:

http://ovha.vermont.gov/reports_and_docs/legislative-reports/ovha-budget/

Bidders are strongly encouraged to review pages 5-19 of the OVHA's Budget Document for "Fast Facts" and "Program Descriptions".

1.3.1.1 Outreach and Enrollment Coordinator

The OVHA is in the process of hiring an Outreach and Enrollment Coordinator to collaborate with the OVHA, the Director of Health Care Reform Implementation, and the Outreach and Enrollment Steering Committee to oversee the development and implementation of all activities described in Section 2.1. The Coordinator will work directly with State staff, external stakeholders, and the bidder selected in response to this RFP to ensure timely and integrated development and implementation of the various activities needed for successful enrollment of the uninsured.

1.3.1.2 Member Services

The OVHA contracts with MAXIMUS for member services. Since 1995, the OVHA and MAXIMUS have collaborated to develop work plans, policies, procedures and systems to provide outreach, enrollment activities and member services to Medicaid beneficiaries. MAXIMUS provides helpline operations, outreach and education to potential enrollees, and assistance to those inquiring about Medicaid health programs.

Statewide outreach and educational activities include the dissemination of eligibility, enrollment and health benefits/program, Helpline, and Health Care Ombudsman Office information to beneficiaries and the general public.

MAXIMUS's member services activities support and assist members. These activities include assistance in resolving billing issues, understanding notice letters from the State, answering questions regarding premium payments and status or explanation of prior authorization, and education of beneficiaries on other available services.

1.3.2 Department for Children and Families (DCF) – Economic Services Division (ESD)

The Economic Services Division (ESD) of the Department for Children and Families (DCF) determines eligibility for Vermont's publicly funded health-care programs. This involves the collection, processing, and analysis of a wide range of information relating to program requirements. This includes data relating to the age, health, and family status of applicants, and information relating to the applicants' income, resources, and access to other health-insurance programs.

The health-care eligibility of those who also participate in other ESD-administered programs is determined by staff located in twelve district offices throughout the State. For those who only receive health-care benefits, eligibility is determined by workers in the Health Access Eligibility Unit (HAEU) in Waterbury. In addition to initial determinations of eligibility, staff is responsible for the periodic review of eligibility status and the evaluation of changed circumstances that may affect eligibility, as they are reported by beneficiaries.

Among other things, ESD partners with DCF's Family Services Division (FSD) to determine the health-care eligibility of youth who are transitioning out of the State's custody in the child-welfare system. It is more generally responsible for determining the health-care eligibility of all transition-age youth, as they migrate across various program boundaries.

ESD has significant responsibility for the design and execution of outreach strategies that are aimed at encouraging and maintaining publicly-funded health-care enrollment.

The DCF/ESD website can be accessed at: <http://www.dcf.state.vt.us/>

1.3.2.1 Youth and Young Adults

Many youth do not enroll in the health care programs that they are eligible for while others may not be receiving the best coverage available to them. Also, when they apply for benefits, some Medicaid-eligible youth may be electing to utilize a short-form, VHAP-only application which would foreclose their consideration for more robust Medicaid coverage. Many young adults lose coverage, not because of a change affecting eligibility, but merely because they fail to participate in periodic eligibility reviews.

Possible outreach strategies that might address these challenges include:

- Efforts aimed at enhancing public awareness of the availability of coverage, including, the development of a "brand" for the service, much like the Dr. Dynasaur label that has supported outreach relating to health care for younger children.
- Development of fact sheets and brochures, designed to inform young adults, advocates, and providers about the availability of coverage for the age group in question.
- Enlistment of public schools in the effort to educate youth about the importance of maintaining health insurance and the availability of publicly-funded health-benefits programs.
- Statewide replication of Spectrum Youth Services' health care advocacy program in Burlington. That program employs a staff person to assist youth in applying for insurance to follow up with young adults to ensure the completion of eligibility re-determinations.

SECTION 2: SCOPE OF WORK

2.1 REQUIREMENTS

The Scope of Work requirements includes a full complement of services to develop and implement a comprehensive outreach and enrollment strategy across a continuum of solutions for the uninsured, using a unified marketing campaign with specialized messages for specific populations and broader audiences, as established by Vermont’s Health Care Reform legislation.

As described in Section 1.2, Vermont has a number of initiatives to promote health care programs for all of its citizens. To be successful, Vermont needs a comprehensive, integrated and aggressive strategy for education, outreach and enrollment, including:

- A broad-based, compelling message that conveys to all Vermonters why it is important to have health insurance coverage.
- Coordination of the broad message with education, outreach and enrollment activities that are nuanced to address targeted populations, including 1) specific uninsured sub-populations (using the 2005 Vermont Family Health Insurance Survey data), and 2) partners who can assist with the coverage efforts (e.g., employers, health care providers, human services providers and other community organizations, schools, the faith community).
- Promotion of all available insurance products and subsidies, including private market options.
- Possible re-branding of existing public health programs along with new public programs into one.
- A staged-approach marketing campaign to maximize enrollment efforts targeted at specific population groups.
- Use of health literacy research, such as that produced by the Harvard School of Public Health, to inform our efforts.

The following table lists the specific types of services that the State is interested in procuring.

Services	General Description	Specific Examples
Outreach and Enrollment Plan	Develop and implement a comprehensive outreach and enrollment plan.	
Creative direction and strategy/concept development	Develop overall look/feel/tonality of project (or overarching brand). Develop the strategic platform for campaign concepts, including category, competitive and client research and analysis. Work usually performed by Creative Director	<ul style="list-style-type: none"> ▪ Development of an education campaign with supporting materials to increase enrollment in Vermont’s health care programs and products.

Services	General Description	Specific Examples
	and/or Associate Creative Director.	<ul style="list-style-type: none"> ▪ Possible Re-branding of Vermont's public health care coverage programs.
Graphic design	Implementing the creative concept into all visual materials. May include layout and resize of various ad/collateral/visual materials. Usually done by Art Director (Junior or Senior) or Production Artist.	<ul style="list-style-type: none"> ▪ Creative development, including layout, color selection, and design of brochures, fact sheets, posters, or other printed materials. ▪ Logo ▪ Redesign Identification cards
Copywriting	Implementing the creative concept into headlines, scripts and body copy. Usually performed by Copywriter (Junior or Senior).	<ul style="list-style-type: none"> ▪ Written text in print materials, TV or radio ads, or web.
Collateral development	Suggest and develop tangible materials that communicate the message, call to action, and information. Collateral is printed material designed to inform, promote, educate, or create awareness of a message	<ul style="list-style-type: none"> ▪ Brochure, fact sheets and posters on insurance options ▪ Tool kit targeted toward various interested entities.
Public relations	Develop and write public relations plans and strategies. May include generating targeted publicity, writing press releases, coordinating special events, and conducting communication audits. Work usually performed by Public Relations department and may include other staff as needed.	<ul style="list-style-type: none"> ▪ Announcement of October 1, 2007 start date ▪ Write press releases and develop schedule for distribution
Trade show/ Event management	Evaluate trade show options and make recommendations. Plan for, organize and execute public events; and provision of collateral materials in advance of event.	<ul style="list-style-type: none"> ▪ Organize public event /announcement of October 1, 2007 start date

Services	General Description	Specific Examples
Printing & production management	Overseeing the process of creating and delivering an end product. May include estimating, negotiating, distributing, scheduling, purchasing and proofing for quality control. Usually performed by Production Manager or other production staff.	<ul style="list-style-type: none"> ▪ Printing of documents ▪ Production of information kits
Partnership development	Identify, initiate, and manage public-private partnerships to ensure consistency, efficiency and effectiveness and to identify collaborative opportunities. Conduct stakeholder focus groups to ascertain interest and make recommendations on involvement.	<ul style="list-style-type: none"> ▪ Working with the Outreach and Enrollment Coordinator and Steering Committee to identify key partners for campaign and for grass-roots involvement ▪ Dissemination of materials and information to ensure that partners have what they need.
Image/ Photographic acquisition and licensing	Arrange for photography sessions and negotiate image ownership rights; provide materials in all requested formats and provide storage of media	<ul style="list-style-type: none"> ▪ Scheduling and oversight of photography shoot
Media buying and placement	Develop strategic plan for media purchases. May include research, use of in- and out-of-house research tools, competitive analysis, media plan and post-buy analysis. Work usually performed by Media Director or Planner.	<ul style="list-style-type: none"> ▪ Media planning and buying for a message on health insurance options
Web/Internet marketing	Utilize the web in the promotion of messages, education, and awareness through advertising, web links, sponsorships, search placement or other web marketing capabilities	<ul style="list-style-type: none"> ▪ On-line promotion of health insurance options
Research	Collection of data, either primary or secondary. May include developing research scope of work, conducting research or selecting a research subcontractor, preparing and overseeing research collection.	<ul style="list-style-type: none"> ▪ Market research on specific types of messages and methods of delivery that are most effective for specific target

Services	General Description	Specific Examples
	Should include delineating the target populations. Work generally performed by Junior or Senior Research Associate or Research Analyst, Account Supervisor or Account Executive.	populations (e.g. what young males respond to).
Project management/ account coordination	Direct and coordinate day-to-day activities in collaboration with the State. May include budget tracking client budgets, moving projects through from start to finish, coordinating scheduling and meeting deadlines. Work usually done by Account Executive (Junior or Senior) or Account Supervisor.	<ul style="list-style-type: none"> ▪ Oversight and management services; tracking progress and following up on next steps.
Measurement/Assessment	Develop mechanism to measure and assess the success of the various types of activities undertaken.	<ul style="list-style-type: none"> ▪ Measure the results of the various strategies employed and make recommendations on changes to ensure success.

2.1.1 Outreach and Enrollment Plan (OEP)

The first deliverable of the selected bidder is the production of a comprehensive Outreach and Enrollment Plan (OEP) that addresses the above activities.

All of the above must be coupled with the tools needed for effective screening and enrollment, including shifting from the current relatively passive approach (e.g., using brochures, a 1-800 number, paper applications and office-based staff) to a more pro-active and consumer-friendly approach (e.g., one-to-one outreach, user-friendly web-based screening tools, simplified application forms, ability to track application status and change in eligibility over time to prevent program drop-out, etc.). These activities will be undertaken by the State, but will need to be closely tied to implementation of the OEP. The State's Outreach and Enrollment Coordinator will collaborate with the OVHA and the Director of Health Care Reform Implementation to facilitate the interface between these activities.

The successful bidder will submit the OEP to the State for review within 14 workdays of contract execution. The State will respond with approval of the OEP or request changes within 14 workdays.

2.1.2 Meetings

1. The successful bidder is required to participate in weekly meetings with State staff. During these meetings, the bidder will provide a status update, discuss their progress report and inform the State of any anticipated challenges that potentially impact progress or impede deadlines. This meeting may occur via conference call or in person in Vermont. Additional meetings may be scheduled at the State's request.
2. At the State's request, the successful bidder is expected to be on site in Vermont to meet with State staff, consultants, vendors, providers and other State or Legislative officials.
3. The successful bidder is required to organize a "kick-off" meeting in Vermont.

2.1.3 Progress Reports

The successful bidder is required to submit weekly progress reports to State staff via an email distribution list. The State will provide the bidder with the names, titles and email addresses that comprise the list. The progress reports should be based on the bidder's approved OEP and should be organized for easy reference to the OEP. Progress reports should include sections for the previous week's (high-level) accomplishments (including milestones/deliverables and expected payment), planned (high-level) activities for the upcoming week, challenges, and updates to any activities, schedules, staff assignments or level of support required from State staff.

2.2 PAYMENT

Payment is based upon completion of deliverables and accomplishment of milestones as set forth in the successful bidder's proposal. Bidders should base their deliverables/milestones on the requirements set forth in section 2.1 and include their deliverable/milestone schedule with associated payment as part of their Cost Proposal submitted in response to this RFP.

2.2.1 Retainage

In submitting a proposal in response to this RFP, bidders agree to a retainage of 15% of the total contract amount to be deducted from each of the bidder's invoices. The entire retainage will be paid to the bidder upon successful completion of all deliverables/milestones.

Should the contract be terminated for any reason related to the bidder's failure to perform to the State's satisfaction, the retainage will revert to the State as liquidated damages in addition to the other penalties and/or damages stated in this RFP or the signed contract.

SECTION 3: GENERAL RFP AND PROCUREMENT INFORMATION

3.1 INTRODUCTION

Prospective bidders are expected to carefully examine all documentation, schedules, and requirements stipulated in this RFP and respond to each requirement in their proposals in the format prescribed. The State is seeking bidders who can develop and implement quickly and efficiently (i.e., systematic implementation of the OEP that leads to successful enrollment starting October 1, 2007).

The State reserves the right to award a contract (or multiple contracts) covering the entire Scope of Work, or any part thereof, if the best interest of the State shall be so served.

3.2 CONTRACT PERIOD

The contract(s) resulting from this RFP is expected to commence on March 19, 2007. The actual contract period will be determined by the State's acceptance of the deliverable/milestone schedule included in the selected bidder's proposal.

3.3 RFP CORRECTIONS AND CHANGES

The State reserves the right to:

- Modify any date or deadline appearing in this RFP.
- Issue clarification notices, addenda, alternative RFP instructions, forms, and/or other relevant documentation.
- Waive any RFP requirement or instruction for all bidders if the State determines that the requirement or instruction was unnecessary, erroneous, or unreasonable.
- Extend the proposal submission deadline.
- Overlook or correct any clerical or mathematical errors occurring in this RFP.

Bidders shall notify the State *immediately* to report a known or suspected problem with this RFP. Bidders who fail to report a known or suspected problem with this RFP shall submit a proposal at their own risk.

3.4 TITLES NOT CONTROLLING

Section titles are used for the purpose of facilitating ease of reference only and shall not be construed to infer a contractual construction of language.

3.5 PROCUREMENT STRATEGY

The State's fundamental commitment is to contract for results and "best value". This RFP primarily describes the State's requirements and desired results. The responsibility for how the Scope of Work requirements and the State's desired results are to be

achieved rests with the successful bidder. “Best value” is the optimum combination of economy and quality that is the result of fair, efficient, and practical business processes that meet the requirements and the State’s desired results as set forth in this RFP.

3.6 PROCUREMENT SCHEDULE

The State plans to adhere to the procurement schedule shown below. The State reserves the right to modify any date or deadline appearing in this RFP.

ACTIVITY	DATE
RFP Issued	February 2, 2007
Closing Date/Time for Receipt of Written Questions/Letter of Intent	February 13, 2007, 4:00 pm (EST)
Bidders’ Conference	February 15, 2007, 1:00 pm to 3:00 pm (EST)
Target Date for Release of State Responses to Written Questions	February 20, 2007
Closing Date/Time for Receipt of Proposals	March 1, 2007, 4:00 pm (EST)
Public Bid Opening	March 1, 2007, 4:15 pm (EST)
Target Date for Selection of Contractor	March 12, 2007
Contract Start Date	March 19, 2007

3.7 ISSUING AUTHORITY

The State of Vermont is issuing this RFP.

3.8 LEGAL BASIS

The procurement process for this RFP shall be conducted in accordance with applicable procurement policies and procedures established by the State of Vermont.

3.9 ISSUANCE AND AMENDMENTS

State officials have reviewed this RFP. The contents represent the best statement of the Scope of Work requirements and needs of the State. Final approval of the contract rests with the State. The State reserves the right to amend the RFP at any time prior to the proposal due date by issuing written addenda. Written addenda to the RFP will become part of the contract. All amendments and releases will be posted to:

<http://ovha.vermont.gov>

The State will make no attempt to contact bidders with updated information. It is the sole responsibility of the bidder to periodically check the above-cited web site for the latest details. No postings will be made after February 20, 2007.

3.10 PROCUREMENT OR ISSUING OFFICER

The following person is the point of contact from the date of issuance of this RFP until the selection of the successful bidder:

Stephanie Beck, Communications Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, Vermont 05495
Telephone: 802-879-5939 / E-mail: Stephanie.Beck@ahs.state.vt.us

3.10.1 Restrictions on Communications

From the issue date of this RFP until a contract is announced, bidders are not allowed to communicate with State staff regarding this procurement (i.e., RFP). The only exceptions to this restriction are:

1. The designated contact person named in applicable RFP sections by the type of communication described (e.g., via email).
2. State staff present at the Bidders' Conference for the purpose of addressing questions.
3. State staff involved in oral presentations

Any attempt by a bidder to contact State staff, other than under the conditions cited above, may result in rejection of the proposal submitted by that bidder.

Note: Nothing within this requirement shall be interpreted to prevent bidders from contacting State staff regarding its general procurement process or with complaints. Contact with State staff is also permitted in the performance of existing contracts or as allowed in response to other, non-related competitive solicitations.

3.11 MANDATORY LETTER OF INTENT

A Letter of Intent to submit a proposal in response to this RFP is **mandatory**. Letters of Intent will not become public information until after the Closing Date/Time for Receipt of Proposals. The submission of a Letter of Intent is not binding on prospective bidders to submit a proposal. Prospective bidders not submitting a Letter of Intent are **not** permitted to bid on this RFP.

Letters of Intent must include the name of the company, the name of the primary contact, the primary contact person's title, telephone and fax numbers, mailing and email addresses. Letters of Intent should also include an indication of whether or not the bidder plans to attend the Bidders' conference, and the number of individuals the Bidder intends to bring. This is for State planning purposes. Bidders are encouraged to limit attendance to no more than three representatives per Bidder.

Letters of Intent are due by **4:00 pm (EST) on February 13, 2007** and must be submitted via letter, fax or email to:

Stephanie Beck, Communications Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, Vermont 05495
Fax: 802-879-5919 / E-mail: Stephanie.Beck@ahs.state.vt.us

3.12 WRITTEN QUESTIONS

Written questions regarding this procurement (i.e., RFP) are due by **4:00 pm (EST) on February 13, 2007**. Written questions received later than the deadline will not be answered. Written questions must be submitted via letter, fax or email to:

Stephanie Beck, Communications Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, Vermont 05495
Fax: 802-879-5939 / E-mail: Stephanie.Beck@ahs.state.vt.us

The State assumes no liability for assuring accurate/complete mail/fax/email transmission/receipt and will not acknowledge receipt except by addressing the question. The State may consolidate and/or paraphrase questions for clarity. The target date for website posting of the State's written responses is February 20, 2007.

3.13 OPTIONAL BIDDERS' CONFERENCE

Prospective bidders will have the opportunity to have questions addressed orally with regard to this procurement (i.e., RFP) at an optional Bidders Conference, scheduled as follows:

Date: February 15, 2007
Time: 1:00 pm to 3:00 pm (EST)
Location: Conference Room, Office of Vermont Health Access, 312 Hurricane Lane, Williston, VT

The State will determine which questions and responses comprise the State's official written response to questions. Bidders should understand that the only official answer or position of the State is the one stated in writing. Verbal responses given at the Bidders' Conference are unofficial and are not binding unless later confirmed in writing.

Attendance at the Bidders' Conference is recommended, but not required. Bidders are responsible for all costs associated with attending the Bidder's Conference.

3.14 ORAL PRESENTATIONS

At the State's option, oral presentations by selected bidders may be required. Bidders will be notified if an oral presentation is required. Bidders may be requested to provide presentation of the services offered in their proposal. Bidders are responsible for all costs associated with an oral presentation. The State will not compensate the bidder.

Note: Bidders should present complete, comprehensive proposals without relying on oral presentations, because the State reserves the right to award a contract without further discussions.

3.15 TECHNICAL REQUIREMENTS

Bidders must provide access to essential technical expertise at the bidder's home office or other locations that are pertinent to the Scope of Work requirements. These staff should be available to the State and to the State's agents.

3.16 COLLECTION AND CORRECTION OF BIDDER INFORMATION

The State reserves the right to:

1. Request a bidder to submit additional documentation during or after the proposal evaluation process.
2. Collect omitted documentation from bidders.
3. Waive any immaterial deviation or defect as may be adjudged by the State in any proposal and allow the bidder to remedy such defects.
4. Overlook, correct or require a bidder to remedy any obvious clerical or mathematical errors occurring within their Narrative or Cost Proposals.
5. Accept Cost Proposal errors that result in a decrease in bidder costs.
6. Request that bidders with Cost Proposals that contain errors resulting in an increase in cost accept the corrected costs or withdraw their proposal.

Bidders' failure to adhere to the State's requests may result in the bidder proposals being determined unresponsive and rejected from further consideration.

SECTION 4: PROPOSAL SUBMISSION REQUIREMENTS

4.1 REJECTION OF PROPOSALS

A proposal may be rejected for failure to conform to the requirements included in this RFP. Proposals must be responsive to all requirements of this RFP to be considered. The State reserves the right to:

1. Reject any and all proposals
2. Waiver minor irregularities
3. Request clarifications from any or all bidders
4. Cancel this RFP

4.2 ACCEPTANCE OF PROPOSALS

Proposals must be responsive to RFP requirements to be considered for a contract award. The State will receive proposals properly submitted. After receipt of proposals, the State reserves the right to sign a contract, with or without further negotiation, based on the terms, conditions, and premises of this RFP and the proposal of the selected bidder.

4.3 COST OF PREPARING PROPOSALS

Costs incurred by bidders during the preparation and subsequent submission of their proposals, and for other procurement-related activities (e.g., travel for oral presentations) will be the sole responsibility of the bidders. The State will not reimburse bidders for any such costs.

4.4 DISPOSITION OF PROPOSALS

All submitted proposals shall become a matter of public record. If the proposal includes material that is considered by the bidder to be proprietary and confidential under Vermont law, the bidder must:

- Clearly designate, with highlighter functions, each section of the proposal which is “proprietary” and/or a “trade secret”.
- Provide in the Transmittal Letter written justification with sufficient grounds as to why each requested exemption should not be released to the general public, including prospective harm to the bidder’s competitive position if the identified material were to be released. Include which part of the Vermont law applies to each exemption.

The State will not consider proprietary and confidential any material, even if so marked, unless specific and sufficient justification is presented in the Transmittal Letter. Under no circumstances will the entire Narrative Proposal or Cost Proposal be considered proprietary and confidential.

All materials submitted by bidders become the property of the State of Vermont, which is under no obligation to return any of the materials submitted in response to this RFP. The State of Vermont shall have the right to use all system concepts, or adaptations of such concepts, contained in any proposal. This right will not be affected by selection or rejection of the proposal. The successful proposal will be incorporated into the resulting contract and will become a matter of public record.

4.5 PROPOSAL WITHDRAWAL

Prior to the proposal due date, a submitted proposal may be withdrawn by submitting a written request for its withdrawal, signed by the bidder's authorized agent, and sent to Stephanie Beck, Office of Vermont Health Access, at the address cited in RFP section 3.11.

4.6 PROPOSAL VALIDITY DATES

Proposals must be valid for 180 business days following the Close Date of this RFP. This period may be extended by written mutual agreement between the bidder(s) and the State. Any proposal submitted shall not be available for disclosure until a contract is executed between the successful bidder and the State.

4.7 SUBMISSION PROCEDURE

Narrative Proposals must be packaged separately from Cost Proposals, and each must be clearly identified on the outside of the package as follows:

Narrative Proposal - the outside of the package containing the Narrative Proposal shall be marked "**OE RFP Narrative Proposal** – Open by Addressee Only" and include one full set of the Narrative Proposal clearly marked "original" and shall be accompanied by an additional five hardcopies and one copy on CD-ROM (Microsoft Word). The Narrative Proposal and each of its copies shall include all materials, transmittals, and agreements specified in this RFP.

Cost Proposal - the outside of the package containing the Cost Proposal shall be marked either "**OE RFP Cost Proposal** – Open by Addressee Only" and include one full set of the Cost Proposal clearly marked "original" and shall be accompanied by an additional five hardcopies and one copy on CD-ROM (Microsoft Word).

All proposals must be physically received no later than March 1, 2007 at 4:00 pm (EST) by:

Stephanie Beck, Communications Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, Vermont 05495

No exceptions will be made for late proposals. The method of delivery is at the discretion of the bidder and is at the bidder's risk as to timeliness and compliance. Proposals may **NOT** be oral, faxed, or emailed. The time of receipt at the designated location is the time-date stamp on the proposal wrapper or other documentation of receipt maintained by the State.

4.7.1 Public Bid Opening

A public bid opening will occur on March 1, 2007 at 4:15 pm (EST) at:

Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, Vermont 05495

4.8 NARRATIVE PROPOSAL FORMAT REQUIREMENTS

The Narrative Proposal shall present a complete description of the bidder's plan to meet the requirements of this RFP. In submitting a proposal in response to this RFP, a bidder agrees to comply with the terms and conditions found in the standard contract provisions and contract attachments C, E, and F (included as Appendices 1 of this RFP). If the use of a subcontractor is proposed, the appropriate certification forms shall be completed and submitted relative to that subcontractor(s).

Narrative Proposal should adhere to the following requirements:

1. Maximum of 25 pages – appendices (#7-#11 in RFP section 4.8.1) are not factored into the 25 page maximum
2. Appendices may be attached - each appendix must be referred to in the body of the Narrative Proposal.
3. One-inch margins at the top, bottom and both sides
4. Font size not less than 12 points
5. Each page must have a footer, which includes the name of the bidder, the page number and the phrase “**OE Narrative Proposal**”
6. Double-sided, double-spaced text
7. White, bond paper, 8 ½ inch by 11 inch
8. Three-hole punched and bound in a way that enables easy page removal
9. All original documents that require a signature must be signed in ink, in a color other than black. *The original Transmittal Letter must be enclosed in with the “original” Narrative Proposal.*
10. Place all original signed documents in the Narrative Proposal marked “Original”
11. The extra proposal sets may reflect photocopy signatures
12. Figures and tables must be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text.

4.8.1 Organization of Narrative Proposal

The State is interested in Narrative Proposals that are organized, comprehensive and offer sound solutions. Specificity is required. Vague explanations will result in reduced proposal evaluation scores. The burden is on the bidder to be direct, clear and complete. The Proposal Evaluation Committee will not search for answers (“dig and ferret”).

Bidders are required to organize their Narrative Proposal as follows with tab distinctions and clear section headings:

1. Transmittal Letter
2. Table of Contents
3. Bidder Information Sheet(s)
4. Executive Summary
5. Capability & Relevant Experience
6. Work Plan with Staff Assignments and Schedule
7. Appendix 1: Organization Chart
8. Appendix 2: References
9. Appendix 3: Financial Statements
10. Appendix 4: Completed Vermont Tax Certification
11. Other Appendices of the bidder’s choosing

Content to be included under each of these headings is described below. Each section within the Narrative Proposal must include content items listed under the respective heading, as the evaluation of proposals shall be done on a section-by-section or functional area basis. Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

No cost information related to this RFP shall appear in the Narrative Proposal; inclusion of such information may constitute grounds for rejection.

4.8.2 Transmittal Letter

The transmittal letter must be submitted on the bidder’s official letterhead and signed in ink by an official authorized to bind the bidder. The Transmittal Letter must include statements that:

1. The bidder does not discriminate in its employment practices with regard to race, color, religion, age (except as provided by law), gender, marital status, sexual orientation, political affiliation, national origin, or disability.
2. No cost information has been included in the Narrative Proposal.
3. Certify the Cost Proposal was arrived at without any conflict of interest, and that it will be firm and binding for 180 business days from the proposal due date.
4. Identify that all addenda to this RFP have been reviewed by the bidder. If no addenda have been reviewed, a statement to that effect should be included.

5. The bidder agrees to adhere to all requirements set forth in this RFP. If the bidder's proposal deviates from these requirements, the Transmittal Letter should reference those items identified as an objection and propose an alternate agreement. The State reserves the right to reject any proposal containing such objections or require rescission before contract acceptance.
6. The bidder has read, understands and unconditionally accepts all requirements, responsibilities, and terms and conditions in this RFP.
7. The bidder agrees that any lost or reduced Federal Financial Participation (FFP), resulting from bidder deviation from specifications and requirements, shall be accompanied by equivalent reductions in State payments to the contractor.
8. The Bidder accepts the provisions of Contract Attachments C, E, and F (Appendix 1 of this RFP).

If any pages within the proposal are marked "Proprietary" and/or a "Trade Secret", include justification and information in the Transmittal Letter.

4.8.3 Table of Contents

Properly identify each section and its contents. Paginate each section and subsection.

4.8.4 Bidder Information Sheet(s)

A Bidder Information Sheet(s) must include the following information:

1. Full name and mailing address of the bidder and, if applicable, the branch office or other subordinate entity that will perform, or assist in performing, the work described in the proposal
2. Street address (for FedEx or other mail service)
3. Indicate whether an individual, partnership, or corporation; if as a corporation, include the state in which it is incorporated.
4. Federal ID Number (or if an individual, the bidder's social security number)
5. Name, title and contact information (i.e., mailing address, telephone and fax numbers, email address) of the person who would sign the contract
6. Name, title and contact information (i.e., mailing address, telephone and fax numbers, email address) of the company contact person (if different)
7. For each key person: name, title, relevancy to this proposal and contact information (i.e., mailing address, telephone and fax numbers, email address)
8. Identify all owners and subsidiaries that own more than five (5) percent of the bidder
9. Indicate the location from which the RFP requirements will be performed
10. List all subcontractors with information #1, #3, #4, #7, #8, #9 cited above

4.8.5 Executive Summary

The Executive Summary shall condense and highlight the contents of the Narrative Proposal in such a way as to provide the Evaluation Committee with a broad

understanding of the entire Narrative Proposal. The Executive Summary shall not exceed five pages in length.

4.8.6 Capability and Relevant Experience

The Capability and Relevant Experience section shall include, for the bidder and each subcontractor (if applicable): details of the background of the bidder, its size and resources, details of relevant experience, overall approach, and a list of all Medicaid/Medicaid-related, Health/Health-related, Insurance/Insurance-related projects from January 2000 through the present date.

Bidders shall describe their experience and approach for addressing section 2.1.

4.8.7 Work Plan with Staff Assignments and Schedule

The Work Plan with Staff Assignments and Schedule must be responsive to this RFP, logical in the sequence of events, provide sufficient detail for review, and should address the Scope of Work requirements in accordance with deliverables/milestones. The Work Plan with Staff Assignments and Schedule should allow for State review and approval of each deliverable/milestone.

Note: selected bidder Work Plan with Staff Assignments and Schedule are subject to modification during the negotiation process with the final Work Plan subject to approval from the State.

At a minimum, bidders shall address the following list as applicable to the Work Plan with Staff Assignments and Schedule.

1. Understanding of, response and approach to completing Scope of Work requirements
2. Acquisition and utilization of staff
3. Utilization of staff resources by the number of weeks required to accomplish each deliverable/milestone
4. Development and Implementation approach
5. Approach to relations with State staff, stakeholders, uninsured Vermonters, Medicaid beneficiaries, providers, media, etc.
6. Use of subcontractors
7. Efficiency mechanisms
8. Assumptions or constraints in developing and completing the Work Plan with Staff Assignments and Schedule
9. A Gantt or Gantt-type chart, depicting start-up and implementation start and end dates with associated activities, and accomplishment of deliverables/milestones
10. Discussion of how the Work Plan with Staff Assignments and Schedule provides for handling of potential and actual problems
11. Description of how bidder's approach clearly and unambiguously accommodates the Scope of Work requirements

12. Indicate how results will be measured, and provide evaluation methodology
13. Propose and describe any unique or innovative method to meet the Scope of Work requirements
14. If applicable, bidders must clearly describe the technologies and approach that they will use to support the Scope of Work, and any expectations regarding technology support to be provided by the State.

4.8.8 Appendix 1: Organization Chart

The bidder should include an Organization Chart that depicts bidder staff (with titles) who will be assigned to perform the Scope of Work. If additional staff is required for various projects during the contract period, the bidder should outline its plans and resources for adapting to such situations. The bidder should also address plans to ensure staff longevity for consistency throughout the contract period.

4.8.9 Appendix 2: References

Narrative Proposals must include at least three (3) references that are pertinent to the Scope of Work requirements. For each reference, the bidder must provide:

- Customer name
- Most senior contact person's name (with title, phone number and email address) most familiar with the bidder's performance
- Brief description of work performed
- Contract term

Additional references may be required, if requested by the State.

4.8.9.1 State of Vermont Contracts

Bidders must list of any and all contracts between the bidder and any State of Vermont government entity since January 1, 2000. For each contract, bidders must provide:

- Customer name
- Most senior contact person's name (with title, phone number and email address) most familiar with the bidder's performance
- Brief description of work performed
- Contract term
- Proposed cost/actual cost
- For expired contract, provide a reason for termination

4.8.10 Appendix 3: Financial Statements

Bidder must:

1. Provide annual audited financial reports for the past three (3) years for the bidder and any subcontractor.
2. If the bidder is an affiliate of another organization, submit the financial information for the parent company and describe the relationship.

4.8.11 Appendix 4: Vermont Tax Certification

The bidder must include a completed Vermont Tax Certification in its Narrative Proposal.

4.8.12 Other Appendices of the Bidder's Choosing

Bidders may include other appendices of their choosing that are relevant to the body of their Narrative Proposal.

4.9 COST PROPOSALS

Bidders shall reference RFP section 2.2 for Cost Proposal information. There will be no opportunity for bidders to revise their costs and there will not be a Best and Final Offer (BAFO) process. Bidders are strongly encouraged to carefully calculate and propose their final costs.

SECTION 5: PROPOSAL EVALUATION METHODOLOGY

Bidders will be assigned a score based on the Steps 2 and 3 (as follows) which, when combined determine the bidder or bidders with the highest overall score. Proposals submitted in response to this RFP will be evaluated as follows:

5.1 STEP 1: MANDATORY REQUIREMENTS

Failure to meet any one of the following requirements may result in a bidder being disqualified from the selection process. The bidder must have:

1. Adhered to all applicable provisions set forth in Section 3 of this RFP
2. Submitted a Proposal in accordance with Section 4 of this RFP

5.2 STEP 2: NARRATIVE PROPOSAL

Only proposals passing Step 1 shall be evaluated during Step 2. Step 2 comprises 80% of the overall scoring methodology and is based on:

1. Executive Summary
2. Capability and Relevant Experience
3. Work Plan with Staff Assignments and Schedule
4. References

5.3 STEP 3: COST PROPOSAL

Step 3 comprises 20% of the overall scoring methodology.

SECTION 6: CONTRACT INFORMATION WITH TERMS AND CONDITIONS

In addition to the required provisions that relate to all State contracts, this section sets forth additional provisions the bidders should be aware of in preparing their response to this RFP.

In addition to the provisions of this RFP and the selected proposal, which shall be incorporated by reference in the contract, any additional clauses or provisions required by Federal or State law or regulation in effect at the time of execution of the contract will be included.

6.1 CONTRACT AWARD NOTICE

All bidders will be notified of the contract award when the contract is executed by both parties. If the awarded bidder fails to execute the contract, the State may elect to cancel the award and begin the award process with the second highest ranked bidder. The procurement process pertinent to this RFP shall not be officially closed until either a contract is executed or the State otherwise moves to terminate procurement.

6.2 CONTRACT ADMINISTRATOR

Upon State approval of a contract, and following execution of said contract, the State shall direct the selected bidder to administer the contract on a day-to-day basis during the term of the contract. However, administration of any contract resulting from this RFP implies no authority to change, modify, clarify, amend, or otherwise alter the costs, terms, conditions, and specifications of such contract. That authority is retained by the State.

The Contract Administrator/Project Manager is:

Stephanie Beck, Communications Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495
Telephone: (802) 879-5939

An alternative Contract Administrator/Project Manager may be designated by the State.

6.3 COST LIABILITY

Vermont assumes no responsibility or liability for costs incurred by the bidder prior to the signing of any contract resulting from this RFP. Total liability of the State is limited to the terms and conditions of this RFP and any resulting contract.

6.4 CONTRACTOR RESPONSIBILITIES

The State shall consider the primary contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated contract. The State reserves the right to approve subcontractors and to require the primary contractor to replace subcontractors found to be unacceptable. The contractor is entirely responsible for adherence by the subcontractor to all provisions of the contract.

The contractor and any subcontractors must commit to the entire contract period, unless a change of subcontractors is specifically agreed to by the State.

The contract between the contractor and the State will not be assignable to another party without prior written permission from the State. The contractor shall provide advance notice to the State on any intended sale of the contracting entity. The State will have the option of terminating the contract with the contractor upon the sale of the contracting entity.

6.5 NEWS RELEASES

News releases pertaining to this RFP or the services, study, data, program or project to which it relates, shall not be made without prior State approval (verbal or written as specified by the State), and then only in accordance with the explicit written instructions from the State. No results of the program are to be released without prior written approval of the State and then only to persons designated.

6.6 FREEDOM OF INFORMATION AND PRIVACY ACT / DISCLOSURE

All material submitted by bidders becomes the irrevocable and sole property of the State of Vermont. The State reserves the right to use all concepts, data, ideas, or configurations presented in any proposal, whether or not the proposal is selected.

All materials relating to this procurement are subject to the terms of the Freedom of Information Act, the Privacy Act, and all rules, regulations, and interpretations of these Acts, including those from the Offices of the Attorney General of the United States, Health and Human Services, Centers for Medicare and Medicaid Services, and the State of Vermont. The bidder, by submitting a proposal, agrees that the Privacy Act of 1974, Public Law 93-579, and the Regulations and General Instructions issued pursuant thereto, are applicable to this contract, and to all subcontracts hereunder. Should the bidder's proposal include any materials that are proprietary and are to be treated confidentially, those materials must be clearly and separately identified. Each page of any proprietary material should be separately labeled.

6.7 GRATUITIES OR KICKBACKS

The State prohibits Gratuities and Kickbacks.

6.8 APPROPRIATIONS

If the contract extends into more than one fiscal year (July 1 to June 30), and if appropriations are insufficient to support the contract, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority.

6.9 OTHER PROVISIONS

Vermont has specific contract language and requirements, as identified in Appendices 1, 2 and 3 of this RFP. Bidders should review this language.

6.10 PERFORMANCE STANDARDS AND PENALTIES

The contractor will be subject, as determined by the Contract Administrator, to forfeiture of up to 10 % of the contract amount for each instance in which the contractor fails to:

Meet, by more than 10 calendar days, the timelines set forth in the contract. The Contract Administrator may waive or adjust this penalty if it is determined that failure to meet the timeline was fully or partially outside the control of the Contractor.

Submit required work products or submits work products that are sufficiently deficient such that the Contract Administrator requests that they be redone.

Repeated levying of penalties for failure to perform may result in cancellation of the contract by the State.

6.11 COMPLIANCE WITH OTHER MATERIAL CONTRACT PROVISIONS

The objective of this standard is to provide the State with an administrative procedure to address general contract compliance issues which are not specifically defined as performance requirements or for which damages due to non-compliance cannot be quantified.

The State may identify contract compliance issues resulting from the contractor's performance of its responsibilities through routine contract monitoring activities. If this occurs, the OVHA Director or Contract Administrator will notify the contractor in writing of the nature of the performance issue. The State will also designate a period of time, not to be less than 10 business days, in which the contractor must provide a written response to the notification and recommend, when appropriate, a reasonable period of time in which the contractor should remedy the non-compliance.

If the non-compliance is not corrected by the specified date, the State may assess sanctions up to \$2,500.00 per day after the due date until the non-compliance is corrected.

6.12 DEDUCTION FROM PAYMENTS

The State may, following proper notification to the contractor, deduct from any payments due the contractor the calculated amount of recovery for any assessed consequential or liquidated damages. The State may, at its sole discretion, return a portion or all of any sanctions collected as an incentive payment to the contractor for prompt and lasting correction of performance deficiencies.

6.13 PROHIBITION AGAINST ADVANCE PAYMENTS

No payment shall be paid by the State in advance of, or in anticipation of services actually performed and/or of supplies furnished under this contract.

6.14 PAYMENTS TO SUBCONTRACTORS

The State shall bear no liability for paying the valid claims of the contractor's subcontractors.

6.15 CONTRACT COMPOSITION

The terms and conditions contained in this section shall be incorporated by reference in any contract resulting from this RFP. The State shall render all decisions on matters involving interpretation of these contract terms and conditions. The contract shall be in conformity with, and shall be governed by, all applicable laws of the Federal government and the State of Vermont.

The components of the contract (in order of precedence) shall consist of:

The formal contract document signed by all parties and any subsequent amendments to that document;
This RFP, inclusive of appendices, exhibits and amendments;
The selected proposal; and
Any written agreements or representations incorporated as part of the procurement process.

In the event of a conflict in language among any of these components, the provisions and requirements set forth and/or referenced in the contract, or, if not set forth in that document, then the provisions and requirements as set forth in this RFP, shall govern. The State reserves the right to clarify any contractual relationship in writing, and such clarifications shall govern in case of conflict with the requirements of this RFP.

If an issue is addressed in the contractor's proposal that is not addressed in the RFP, no conflict in language shall be deemed to have occurred.

6.15.1 Entire Agreement

The components cited in RFP section 6.15 represent the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect. A record of formal contract negotiations, if any, between the parties will be prepared by the OVHA and will become part of the contract file. The contract between the parties shall be independent of, and have no effect upon, any other contracts of either party.

6.15.2 Contract Amendments

An approved contract amendment is required whenever a change affects the payment provisions, the scope of work, the length of the contract, or when other contract deliverables do not meet the requirements of the State. Formal contract amendments will be negotiated by the State with the Contractor whenever necessary to address changes to the terms and conditions, the costs of, or the scope of work included under the contract. An approved contract amendment means one approved by the OVHA, the contractor, and all other applicable State and Federal agencies prior to the effective date of such change.

6.15.3 Subsequent Conditions

The contractor shall comply with all requirements of this RFP and the State shall have no obligation until such time as all of said requirements have been met.

6.15.4 Contract Administration

The contract shall be administered for the State by the OVHA. The OVHA Director and the Contract Administrator will be responsible for all matters related to this contract.

The Contract Administrator shall be the contractor's primary liaison in working with other State staff and with any other contractor. In no instance shall the contractor refer any matter to any other official in Vermont unless initial contact, both verbal and in writing, regarding the matter has been presented to the OVHA Director or the Contract Administrator.

Whenever the State is required by the terms of the contract to provide written notice to the contractor, such notice shall be signed by the OVHA Director or Contract Administrator. All notices regarding the failure to meet performance requirements and any assessments of damages under the provisions set forth in this RFP shall be issued by the OVHA Director or the Contract Administrator.

6.15.5 Notices

Whenever notice is required to be given to the other party, it shall be made in writing and delivered to that party. Delivery shall be deemed to have occurred if a signed receipt is obtained when delivered by hand or three (3) days have elapsed after posting if sent by registered or certified mail, return receipt requested, or by private carrier with a signed

receipt slip. A transmission by fax will not be considered a formal notice. Notices shall be addressed as follows:

In case of notice to the contractor:

Contractor Name
Contractor Address

In case of notice to OVHA:

OVHA Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, Vermont 05495

A copy of the notice shall be sent to the Contract Administrator. Said notices shall become effective on the date of receipt or the date specified within the notice, whichever comes later. Either party may change its address for notification purposes by mailing a notice stating the change and setting forth the new address.

6.15.6 Authority

Each party has full power and authority to enter into and perform the contract. Each party certifies that the person signing on its behalf has been properly authorized and empowered to enter into the contract. Each party further acknowledges that it has read the contract, understands it, and agrees to be bound by it.

6.16 INTERPRETATIONS AND DISPUTES

6.16.1 Conformance with State and Federal Regulations

The contractor agrees to comply with all State and Federal laws, regulations, and policies as they exist or as amended that are or may be applicable to the contract, including those not specifically mentioned in this chapter. In the event that the contractor may, from time to time, request the State to make policy determinations or to issue operating guidelines required for proper performance of the contract, the State shall do so in a timely manner, and the contractor shall be entitled to rely upon and act in accordance with such policy determinations and operating guidelines and shall incur no liability in doing so unless the contractor acts negligently, maliciously, fraudulently, or in bad faith.

6.16.2 Waivers

No covenant, condition, duty, obligation, or undertaking contained in or made a part of the contract shall be waived except by the written agreement of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not

constitute a Waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply.

Notwithstanding any such forbearance or indulgence, the other party shall have the right to invoke any remedy available under law or equity until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings.

Waiver of any breach of any term or condition in the contract shall not be deemed a Waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

6.16.3 Severability

If any provision of the contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the State and the contractor shall be relieved of all obligations arising under such provision; if the remainder of the contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed. To this end, the terms and conditions defined in the contract can be declared severable.

6.16.4 Legal Considerations

This contract shall be governed in all respects by the laws and statutes of the State of Vermont. The bidder, by submitting a proposal, agrees and submits to the jurisdiction of the courts of the State of Vermont and agrees that venue for any legal proceeding against the State regarding this RFP or any resultant contract shall be filed in the Superior Court of Washington County. In the event that either party deems it necessary to take legal action to enforce any provision of the contract, the Contractor shall bear their costs associated with the litigation, including attorney fees as assessed by the court. Any action against the State, including, but not limited to, actions either for breach of contract or for enforcement of its provisions, or both, shall be commenced within three (3) years from the date of completion specified in the contract and shall be tried by a court sitting without a jury. All defenses in law or equity, except the defense of governmental immunity, shall be preserved to the State. Any further appeal of the Superior Court's decision may be taken to the Supreme Court of the State of Vermont.

6.16.5 Disputes

Prior to the institution of litigation concerning any dispute arising under the contract, the Secretary of the AHS of the State of Vermont is authorized, subject to any limitations or conditions imposed by regulations, to settle, compromise, pay, or otherwise adjust the dispute by or against or in controversy with, a contractor relating to a contract entered into by the AHS on behalf of the State or any State department or office, including a claim or controversy based on a contract, mistake, misrepresentation, or other cause for contract modification or rescission, but excluding any claim or controversy involving

penalties or forfeitures prescribed by statute or regulation where an official other than the Secretary of the AHS is specifically authorized to settle or determine such controversy.

A "contract dispute" shall mean a circumstance whereby a contractor and the State entity are unable to arrive at a mutual interpretation of the requirements, limitations, or compensation for the performance of a contract.

The Secretary of the AHS shall be authorized to resolve contract disputes between contractors and State entities upon the submission of a request in writing from either party, which request shall provide:

1. A description of the problem, including all appropriate citations and references from the contract in question.
2. A clear statement by the party requesting the decision of the Secretary's interpretation of the contract.
3. A proposed course of action to resolve the dispute.

The Secretary shall determine whether:

1. The interpretation provided is appropriate.
2. The proposed solution is feasible.
3. Another solution may be negotiable.

If a dispute or controversy is not resolved by mutual agreement, the Secretary or his/her designee shall promptly issue a decision in writing after receipt of a request for dispute resolution. A copy of the decision shall be mailed or otherwise furnished to the contractor. If the Secretary does not issue a written decision within 30 days after written request for a final decision, or within such longer period as might be established by the parties to the contract in writing, then the contractor may proceed as if an adverse decision had been received.

Appeals of the Secretary's decision may be taken to the Washington County Superior Court under the same conditions and under the same practice as appeals are taken from judgments in civil cases. If damages awarded on any contract claim under this section exceed the original amount of the contract, such excess shall be limited to an amount which is equal to the amount of the original contract. No person, firm, or corporation shall be permitted more than one money recovery upon a claim for the enforcement of or for breach of contract with the State.

6.17 GUARANTEES, WARRANTIES, AND CERTIFICATIONS

6.17.1 Contractor Recoveries

In the event this contract is terminated for any reason, the State shall be obligated only for the products/services rendered and accepted prior to the date of termination, and limited to actual, reasonable and allowable costs in accordance with contract payment provisions. All such products become the property of the State of Vermont.

The contractor may be paid for outstanding invoices due, less assessed damages. If damages exceed monies due from invoices, collection may be made from the contractor's performance bond.

Recovery Process

The contractor shall submit any termination claims in the form and with the certifications prescribed by the State promptly, but in no event later than four months from the effective date of termination.

Subject to the timeliness provisions in the previous paragraph, and subject to any review required by State procedures in effect as of the date of execution of the contract, the contractor and the OVHA may agree upon the amounts to be paid to the contractor by reason of the total or partial termination of work.

The State will only pay for those services for which value has been received in progress on a product, regardless of contractor costs. The contractor shall not be entitled to be paid for any work performed in connection with terminated parts and after notice of termination is received.

In the event of a failure to agree in whole or in part as to any amounts to be paid to the contractor in connection with the total or partial termination of work pursuant to this contract, the State shall determine on the basis of information available, the amount, if any, due to the contractor by reason of termination and shall pay to the contractor the amount so determined. The contractor shall have the right of appeal.

If the State determines that the facts justify such action, termination claims may be accepted and acted upon at any time after such four-month period or extension thereof. Upon failure of the contractor to submit its termination claim within the time allowed, the OVHA may, subject to review required by State procedures in effect as of the date of execution of the contract, determine on the basis of information available, the amount, if any, due to the contractor by reason of the termination and shall pay to the contractor the amount so determined.

In no case shall the contractor's termination claims include claim for unrealized anticipatory profits.

6.17.2 State Recoveries

In the event this contract is terminated for any reason, the OVHA may procure, upon such terms and in such manner as deemed appropriate by the OVHA, supplies or services similar to those terminated, and the contractor may be liable for any costs for such similar supplies or services and other damages allowed by law.

Additionally, the contractor shall be liable to the State for administrative costs incurred to procure such similar supplies or services as are needed to continue operations. Payment for such costs may be assessed against the contractor's performance bond.

The contractor acknowledges that:

Any failure or unreasonable delay on its part in the delivery of materials and/or turnover activities will cause irreparable injury to the OVHA, not adequately compensable in damages.

The OVHA may seek and obtain injunctive relief and monetary damages. Payments made by the OVHA may also constitute an element of damages in any action in which contractor default is alleged.

1. The rights and remedies of the OVHA provided in this section shall not be exclusive and are in addition to other rights and remedies provided by law or under contract provisions.

6.17.3 Subcontracts and Delegation of Duty

The contractor may enter into written subcontract(s) for performance of certain of its contract responsibilities. The proposed use of subcontractors shall be clearly explained in the bidder's proposal and should identify which subcontractors are providing what services. The contractor shall make available all subcontracts for inspection by the State upon request for the State's prior approval. Any change in subcontractors during the term of the contract shall be submitted to the State for review and shall be subject to the State's prior approval.

The primary contractor shall be wholly responsible for performance of the entire contract whether or not subcontractors are used. Any subcontract which the contractor enters into with respect to performance under the contract shall not relieve the Contractor in any way of responsibility for performance of its duties. Further, the State will consider the selected contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

The contractor shall give the State immediate notice in writing, by certified mail, of any action or suit filed and of any claim made against the contractor or subcontractor that may result in litigation with the AHS related to this contract.

Executive Order 924 encourages each State agency to meet a goal of 10% of the dollar value of all procurement be awarded to small and small disadvantaged and minority and woman-owned businesses as subcontractors, pursuant to the provisions of Part 19 of Title 48, Federal Acquisition Regulations; 45 CFR 74.161, Appendix C; and Chapter 37-2.5.5.2.

All of the program standards described in this RFP shall apply to subcontractors, to the extent relevant, to the duties they are performing.

6.17.4 Assignment of the Contract

The contractor shall not sell, transfer, assign, or otherwise dispose of the contract or any portion thereof or of any right, title, or interest therein without the prior written consent of the State. Such consent, if granted, shall not relieve the contractor of its responsibilities under the contract. This provision includes reassignment of the contract due to change in ownership of the firm.

6.17.5 Force Majeure

Neither the contractor nor the State shall be liable for any damages or excess costs for failure to perform their contract responsibilities if such failure arises from causes beyond the reasonable control and without fault or negligence by the contractor or the State. Such causes may include, but are not restricted to, fires, earthquakes, tornadoes, floods, unusually severe weather, or other catastrophic natural events or acts of God; quarantine restrictions; explosions; subsequent legislation by the State of Vermont or the Federal government; strikes by other than the contractor's employees; and freight embargoes. In all cases, the failure to perform must be beyond the reasonable control of, and without fault or negligence of, either party.

6.17.6 Patent or Copyright Infringement

The contractor shall represent that, to the best of its knowledge, none of the software to be used, developed, or provided pursuant to this contract violates or infringes upon any patent, copyright, or any other right of a third party. If any claim or suit is brought against the State for the infringement of such patents or copyrights arising from the contractor's or the State's use of any equipment, materials, computer software and products, or information prepared for, or developed in connection with performance of, this contract, then the contractor shall, at its expense, defend such use. The contractor shall satisfy any final award for such infringement, whether it is resolved by settlement or judgment involving such a claim or suit.

6.18 PERSONNEL

6.18.1 Employment Practices

The contractor shall:

1. Agree to comply with the requirements relating to fair employment practices; to the extent applicable and agrees further to include a similar provision in any and all subcontracts.
2. Not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, age (except as provided by law), marital status, political affiliation, or handicap.
3. Take affirmative action to ensure that employees, as well as applicants for employment, are treated without regard to their race, color, religion, sex, sexual

- orientation, national origin, age (except as provided by law), marital status, political affiliation, or handicap. Such action shall be taken in areas including, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
4. Agree to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provision of this non discrimination clause.
 5. In all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, national origin, age (except as provided by law), marital status, political affiliation, or handicap, except where it relates to bona fide occupational qualification.
 6. Send to each labor union or representative of workers with which he has a collective bargaining arrangement or other agreement or understanding, a notice advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1976, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
 7. Agree to comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 USC 2000D et seq.); Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794); Title IX of the Education Amendments of 1972 (20 USC 1681 et seq.); The United States Department of Health and Human Services regulations found in 45 CFR, parts 80 and 84; and the United States Department of Education implementing regulations (34 CFR, parts 104 and 106); which prohibit discrimination on the basis of race, color, national origin, handicap, or sex, in acceptance for or provision of services, employment, or treatment in educational or other programs or activities.
 8. Comply with all provisions of Executive Order No.11246 of September 24, 1976, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 9. Furnish all information and reports required by Executive Order No.11246 of September 24, 1976, as amended, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto and will permit access to its books, records, and accounts by the Secretary of the U.S. Department of Health and Human- Services and the U.S. Secretary of Labor or their authorized representatives for purposes of investigation to ascertain compliance with rules, regulations, and orders.
 10. Comply with the nondiscrimination clause contained in Federal Executive Order 11246, as amended by Federal Executive Orders 11625 and 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor and with Title 41, Code of Federal Regulations, Chapter 60.
 11. Comply with regulations issued by the Secretary of Labor of the United States in Title 20, Code of Federal Regulations, Part 741, pursuant to the provisions of Executive Order 11758 and the Federal Rehabilitation Act of 1973.
 12. Be responsible for ensuring that all subcontractors comply with the above-mentioned regulations. The contractor and its subcontractors shall comply with the Civil Rights

- Act of 1964, and any amendments thereto, and the rules and regulations there under, and Section 504 of Title V of the Vocational Rehabilitation Act of 1973, as amended.
13. Comply with all applicable provisions of Stat. 53-1147, the Federal "Hatch Act," as amended.
 14. Comply with all applicable provisions of Public Law 101-336, Americans with Disability Act.
 15. Provide a drug-free work place in accordance with the Drug-Free Workplace Act of 1988 and implemented at 45 CFR 76, Subpart F for grantees, as defined at 45 CFR Part 76, Section 76.605 and 76.610.
 16. Agree comply with all other State and Federal statutes and regulations that are or may be applicable and that are not specifically mentioned above.

6.18.2 Employment of State Personnel

The contractor shall not knowingly engage on a full-time, part-time, or other basis, during the period of the contract, any professional or technical personnel who are or have been at any time during the period of this contract, State employees, except those regularly retired individuals, without prior written approval from the Secretary of the AHS or designee.

6.18.3 Fraud and Abuse

The contractor shall require its employees, contractors, and grantees which provide goods or services for the plan to furnish, upon reasonable request, to the OVHA and the Attorney General any record, document, or other information necessary for a review, audit, or investigation of program fraud or abuse, and shall establish procedures to report all suspected fraud and abuse to the OVHA and the Attorney General.

6.19 INSPECTION OF WORK PERFORMED

The OVHA, the AHS, Vermont Auditor of Accounts, the U.S. Department of Health and Human Services, the Centers for Medicare and Medicaid Services, the General Accounting Office, the Comptroller General of the United States, the Office of the Inspector General, Medicaid Fraud Control Unit of the Office of the Attorney General or their authorized representatives shall, during normal business hours, have the right to enter into the premises of the Contractor and/or all subcontractors and providers, or such other places where duties under the contract are being performed, to inspect, monitor, or otherwise evaluate the work being performed. All inspections and evaluations shall be performed in such a manner as to not unduly delay work.

6.20 TERMINATION OF THE CONTRACT

The contract between the parties may be terminated only on the following basis:

1. By mutual written agreement of the State and the contractor.

2. By the State, in whole or in part, whenever it determines that the contractor has failed to satisfactorily perform its contracted duties and responsibilities and is unable to cure such failure within a reasonable period of time after receipt of a notice specifying those conditions.
3. By the State, in whole or in part, whenever, for any reason, the state shall determine that such termination is in the best interest of the State, with sufficient prior notice to the contractor.
4. By the State, in whole or in part, whenever funding from State, Federal, or other sources is withdrawn, reduced, or limited, with sufficient prior notice to the contractor.
5. By the State, in whole or in part, whenever the State determines that the instability of the contractor's financial condition threatens delivery of Medicaid services and continued performance of the contractor responsibilities.

Each of these circumstances is incorporated in the following subsections.

6.20.1 Termination for Default

The State may terminate this contract, in whole or in part, whenever it determines that the contractor or subcontractor has failed to satisfactorily perform its contracted duties and responsibilities and is unable to cure such failure within a reasonable period of time as specified in writing by the State, taking into consideration the gravity and nature of the default. Such termination shall be referred to herein as "Termination for Default."

Upon determination by the State that the contractor has failed to satisfactorily perform its contracted duties and responsibilities, the contractor shall be notified in writing, by either certified or registered mail, of the failure and of the time period which has been established to cure such failure. If the contractor is unable to cure the failure within the specified time period, the State will notify the contractor that the contract, in full or in part, has been terminated for default.

If, after notice of termination for default, it is determined by the State or by a court of law that the contractor was not in default or that the contractor's failure to perform or make progress in performance was due to causes beyond the control of, and without error or negligence on the part of, the contractor or any of its subcontractors, the notice of termination shall be deemed to have been issued as a termination for the convenience of the State, and the rights and obligations of the parties shall be governed accordingly.

In the event of termination for default, in full or in part as provided under this clause, the State may cover, upon such terms and in such manner as is deemed appropriate by the State, supplies or services similar to those terminated, and the contractor shall be liable for any costs for such similar supplies or services and all other damages allowed by law. In addition, the contractor shall be liable to the State for administrative costs incurred to procure such similar supplies or services as are needed to continue operations. Payment

for such costs may be assessed against the contractor's performance bond or substitute security.

In the event of a termination for default, the contractor shall be paid for any outstanding monies due less any assessed damages. If damages exceed monies due from invoices, collection can be made from the contractor's performance bond, cash deposit, letter of credit, or substitute security.

The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

6.20.2 Termination for Convenience

The State may terminate performance of work under the contract, in whole or in part, whenever, for any reason, it shall determine that such termination is the most appropriate action for the State of Vermont.

In the event that the State elects to terminate the contract pursuant to this provision, the Contractor shall be notified in writing by either certified or registered mail either 30 days prior to or such other reasonable period of time prior to the effective date, of the basis and extent of termination. Termination shall be effective as of the close of business on the date specified in the notice. Upon receipt of notice of termination for convenience, the contractor shall be paid for any outstanding monies due.

6.20.3 Termination for Unavailability of Funds

In the event funding from State, Federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to the anticipated contract expiration date, the State may terminate the contract under the "Termination for Convenience" clause.

6.20.4 Termination for Financial Instability

In the event that the contractor becomes financially unstable to the point of threatening the ability of the State to obtain the services provided for under the contract, ceases to conduct business in the normal course, makes a general assignment for the benefit of creditors, or suffers or permits the appointment of a receiver for its business or its assets, the State may, at its option, immediately terminate this contract effective the close of business on the date specified. In the event the State elects to terminate the contract under this provision, the contractor shall be notified in writing by either certified or registered mail specifying the date of termination. In the event of the filing of a petition in bankruptcy by or against a principal subcontractor, the contractor shall immediately notify the Contract Administrator. The contractor shall ensure that all tasks related to the subcontract are performed in accordance with the terms of this contract.

6.20.5 Procedures on Termination

Upon delivery by certified or registered mail to the contractor of a Notice of Termination specifying the nature of the termination and the date upon which such termination becomes effective, the contractor shall:

1. Stop work under the contract on the date and to the extent Specified in the Notice of Termination.
2. Complete the performance of such part of the work as has not been terminated by the Notice of Termination.
3. Provide all necessary transitioning assistance and relevant information to the State.

6.21 MISCELLANEOUS CONTRACT TERMS AND CONDITIONS

6.21.1 Ownership of Data, Reports, Work Products and Deliverables

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the State of Vermont and 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 developed for the State, the work shall be considered “work for hire”, i.e., the State, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed.

All work products, and deliverables produced under contracts awarded as a result of bids will be the exclusive property of the State of Vermont. This includes, but is not limited to, software, documentation, and development materials. A contractor shall not sell a work product or deliverable produced under a contract awarded as a result of bids without explicit permission from the State.

6.21.2 Publicity

Any publicity given to the program or services provided herein, including, but not limited to, notices, information pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the contractor, shall identify the State of Vermont as the sponsor and shall not be released without prior written approval from the State.

6.21.3 Award of Related Contracts

The State may undertake other contracts for work related to this contract or any portion thereof. The contractor shall be bound to cooperate fully with such other contractors as directed by the State in all such cases. All subcontractors will be required to abide by this provision as a condition of the contract between the subcontractor and the primary contractor.

6.21.4 Conflict of Interest

No official or employee of the State of Vermont or the Federal government who exercises any functions or responsibilities in the review or approval of the undertaking-or carrying out of this contract shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in the contract or proposed contract. All applicable State employees shall be subject to the provisions of the Executive Order Code of Ethics, Executive Order No.8-91.

The contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The contractor further covenants that, in the performance of the contract, no person having any such known interests shall be employed.

6.21.5 Lobbyist Reporting Law

In accordance with 2 V.S.A., Sections 261-268, lobbyists and their employers must report all gifts of \$5.00 or more to legislators or administration officials. Lobbyists include all persons who engage in lobbying for compensation of more than \$500 in any calendar year. Lobbyists and their employers must register and file reports with the Vermont Secretary of State.

APPENDIX 1: CONTRACT ATTACHMENTS C, E, F

Contract attachments C, E and F can be access at:

http://www.ahsinfo.ahs.state.vt.us/ContractAdmin/contract_attachments.htm

APPENDIX 2: VERMONT TAX CERTIFICATIONDATE: ***(DATE)****REQUEST FOR PROPOSAL**
***(TITLE)**

Address

This form must be completed and submitted as part of the response for the proposal to be considered valid.

The undersigned agrees to furnish the products or services listed at the prices quoted and, unless otherwise stated by the vendor, the Terms of Sales are Net 30 days from receipt of service or invoice, whichever is later. Percentage discounts may be offered for prompt payments of invoices; however, such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.

VERMONT TAX CERTIFICATE AND INSURANCE CERTIFICATE

To meet the requirements of Vermont Statute 32 V.S.A. subsection 3113, by law, no agency of the State may enter into extend or renew any contract for the provision of goods, services or real estate space with any person unless such person first certifies, under the pains and penalties of perjury, that he or she is in good standing with the Department of Taxes. A person is in good standing if no taxes are due, if the liability for any tax that may be due is on appeal, or if the person is in compliance with a payment plan approved by the Commissioner of Taxes, 32 V.S.A. subsection 3113. In signing this bid, the bidder certifies under the pains and penalties of perjury that the company/individual is 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 as of the date this statement is made.

Bidder further certifies that the company/individual is in compliance with the State's insurance requirements as detailed in section 21 of the Purchasing and Contract Administration Terms and Conditions. All necessary certificates must be received prior to issuance of Purchase Order. If the certificate of insurance is not received by the Division of Purchasing and Contract Administration within five (5) days, the State of Vermont reserves the right to select another vendor. Please reference this RFQ# when submitting the certificate of insurance.

Insurance Certificate: Attached _____ Will provide upon notification of award: _____ (within 5 days)

Delivery Offered _____ Days After Notice of Award Terms of Sale _____

Quotation Valid for _____ Days _____ Date: _____

Name of Company: _____ Telephone Number: _____

Fed ID or SS Number: _____ Fax Number: _____

By: _____ Name: _____
Signature (Bid Not Valid Unless Signed) (Type or Print)

ATTACHMENT C

CUSTOMARY STATE CONTRACT PROVISIONS

1. **Entire Agreement.** This contract 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 contract will be governed by the laws of the State of Vermont.
3. **Appropriations.** If this contract extends into more than one fiscal year of the state (July 1 to June 30), and if appropriations are insufficient to support this contract, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriations authority.
4. **No Employee Benefits for Contractors.** The Contractor understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation and sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any federal or state taxes except as required under applicable tax laws, which shall be determined in advance of execution of the contract. The Contractor 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 Contractor, and information as to contract income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
5. **Independence, Liability.** The Contractor will act in an independent capacity and not as officers or employees of the State. The Contractor shall indemnify, defend and hold harmless the State and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of the Contractor's acts and/or omissions in the performance of this contract. The Contractor shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this contract.
6. **Insurance.** Before commencing work on this contract the Contractor must provide certificates of insurance to show that the following minimum coverage are in effect. The Contractor must notify the State no more than 10 days after receiving cancellation notice of any required insurance policy. It is the responsibility of the Contractor to maintain current certificates of insurance on file with the State through the term of the contract. Failure to maintain the required insurance shall constitute a material breach of this contract.

Workers Compensation: With respect to all operations performed, the Contractor 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 Contractor shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Independent Contractors' Protective
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

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

Professional Liability: Before commencing work on this contract and throughout the term of this contract, the Contractor shall procure and maintain professional liability insurance for any and all services performed under this contract, with minimum coverage of \$ N/A per occurrence.

No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Contractor for the Contractor's operations. These are solely minimums that have been set to protect the interests of the State.

7. **Reliance by the State on Representations:** All payments by the State under this contract will be made in reliance upon the accuracy of all prior representations by the Contractor, including but not limited to bills, invoices, progress reports and other proofs of work.
8. **Records Available for Audit.** The Contractor will maintain all books, documents, payroll, papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the contract and for three years thereafter for inspection by any authorized representatives of the State or Federal government. If any litigation, claim or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this contract.
9. **Fair Employment Practices and Americans with Disabilities Act:** Contractor 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. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Contractor under this contract. Contractor further agrees to include this provision in all subcontracts.
10. **Set Off:** The State may set off any sums which the Contractor owes the State against any sums due the Contractor under this contract; 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.

- II. **Taxes Due to the State.**
- a. Contractor 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. Contractor certifies under the pains and penalties of perjury that, as of the date the contract is signed, the Contractor 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. Contractor understands that final payment under this contract may be withheld if the Commissioner of Taxes determines that the Contractor 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. Contractor also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Contractor has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Contractor has no further legal resource to contest the amounts due.
12. **Child Support.** (Applicable if Contractor is a natural person, not a corporation or partnership.) Contractor states that, as of the date the contract 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.
- Contractor makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Contractor is a resident of Vermont, Contractor makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.
13. **Subcontractors.** The Contractor shall not assign or subcontract the performance of this agreement or any portion thereof to any other contractor without the prior written approval of the State. Contractor also agrees to include in all subcontract agreements a tax certification in accordance with paragraph II above.
- Notwithstanding the foregoing, the State agrees that the Contractor may assign this contract, including all of the Contractor's rights and obligations hereunder, to any successor in interest to the Contractor arising out of the sale of or reorganization of the Contractor.
14. **No Gifts or Gratuities.** Contractor 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 contract.
15. **Copies.** All written reports prepared under this contract will be printed using both sides of the paper.

16. **Access to Information.** The Contractor agrees to comply with the requirements of AHS Rule No. 96-23 concerning access to information. The Contractor shall require all of its employees performing services under this contract to sign the AHS affirmation of understanding or an equivalent statement.
17. **Suspension and Debarment.** Non-federal entities are prohibited by Executive Orders 12549 and 12689 from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (sub-awards to sub-recipients). By signing this contract, current Contractor certifies as applicable, that the contracting organization and its principals are not suspended or debarred by GSA from federal procurement and non-procurement programs.
18. **Health Insurance Portability & Accountability Act (HIPAA).** The confidentiality of any health care information acquired by or provided to the independent contractor shall be maintained in compliance with any applicable state or federal laws or regulations.
19. **Abuse Registry.** The Contractor agrees not to employ any individual, or use any volunteer, to provide for the care, custody, treatment, or supervision of children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid childcare license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Abuse Registry. (See 33 V.S.A. §4919 & 33 V.S.A. §6911).
20. **Voter Registration.** When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of State and Federal law pertaining to such agencies.
21. **Non-Discrimination Based on National Origin as evidenced by Limited English Proficiency.** The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and sub-grantees receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.

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, Office, or Division of** (_____**Insert Department, Office, or Division**) (“Covered Entity”) and (_____**Insert Name of the Contractor**) (“Business Associate”) as of (_____**Insert Date**) (“Effective Date”). This Agreement supplements and is made a part of the Contract to which it is an attachment.

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”).

The parties agree as follows:

1. **Definitions.** All capitalized terms in this Agreement have the meanings identified in this Agreement, 45 CFR Part 160, or 45 CFR Part 164.

The term “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.

The term “Individual” includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g). All references to “PHI” mean Protected Health Information. All references to “Electronic PHI” mean Electronic Protected Health Information.

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

2.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services provided that any use or disclosure would not violate the minimum necessary policies and procedures of Covered Entity. 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.

2.2 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 (including subcontractors) in accordance with Sections 6 and 14 or (b) as otherwise permitted by Section 3.

3. **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 (a) Business Associate obtains reasonable written assurances via a written contract 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 (b) the person promptly notifies Business Associate (who in turn will promptly notify Covered Entity) in writing of any instances of which it is aware in which the confidentiality of the PHI has been breached. Uses and disclosures of PHI for the purposes identified in this Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

4. **Safeguards.** Business Associate shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.
5. **Reporting.** Business Associate shall report in writing to Covered Entity any use or disclosure of PHI in violation of this Agreement by Business Associate or its agents including its subcontractors. Business Associate shall provide this written report promptly after it becomes aware of such use or disclosure. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate the impermissible use or disclosure. Consistent with 45 CFR 164.502(j)(1) Business Associate may use PHI to report violations of law to federal and state authorities.
6. **Agreements by Third Parties.** Business Associate shall ensure that any agent (including a subcontractor) to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity agrees in a written contract to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. For example, the written contract must include those restrictions and conditions set forth in Section 12. Business Associate must enter into the written contract before any use or disclosure of PHI by such agent. The written contract must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the contract concerning the use or disclosure of PHI. Business Associate shall provide a copy of the written contract to Covered Entity upon request. Business Associate may not make any disclosure of PHI to any agent without the prior written consent of Covered Entity.
7. **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. Business Associate shall promptly forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.
8. **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. Business Associate shall promptly forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.
9. **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. Business Associate shall promptly forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

10. 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 (without regard to the attorney-client or other applicable legal privileges) 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.

11. Termination

11.1 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 15.11.

11.2 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 this Contract without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate this Contract 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 this Contract, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

12. Return/Destruction of PHI.

12.1 Business Associate in connection with the expiration or termination of this Contract shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this Contract 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.

12.2 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.

13. Notice/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 information security awareness

training regarding the use, confidentiality, and security of PHI.

14. Security Rule Obligations. The following provisions of this Section 14 apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

14.1 Business Associate shall implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of 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.

14.2 Business Associate shall ensure that any agent (including a subcontractor) to whom it provides Electronic PHI agrees in a written contract 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 contract before any use or disclosure of Electronic PHI by such agent. The written contract must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the contract concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written contract to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any agent without the prior written consent of Covered Entity.

14.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an agent, including a subcontractor). Business Associate shall provide this written report promptly after it becomes aware of any such Security Incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

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

15. Miscellaneous.

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

15.2 Any reference to “promptly” in this Agreement shall mean no more than seven (7) business days after the circumstance or event at issue has transpired. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended or renumbered.

15.3 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of a use or disclosure of PHI in violation of any provision of this Agreement.

15.4 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.

15.5 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.

- 15.6 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule) in construing the meaning and effect of this Agreement.
- 15.7 This Agreement may be amended or modified, and any right under this Agreement may be waived, only by a writing signed by an authorized representative of each party.
- 15.8 Nothing express or implied in this Agreement is intended to confer upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever. Notwithstanding the foregoing, the Covered Entity in this Agreement is the Agency of Human Services operating by and through its Department, Office, or Division of (_____ **Insert name of Department, Office, or Division**). Covered Entity and Business Associate agree that the term “Covered Entity” as used in this Agreement also means any other Department, Division or Office of the Agency of Human Services to the extent that such other Department, Division, or Office has a relationship with Business Associate that pursuant to the Privacy or Security Rules would require entry into an agreement of this type.
- 15.9 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.
- 15.10 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 under this Contract 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.
- 15.11 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 12.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 9 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.
- 15.12 This Agreement constitutes the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written agreements between the parties in such respect.

ATTACHMENT F

Agency of Human Services Rule # 96-23 Final Adopted Rule for Access to Information

I. Definition.

1.1 “Agency” means the Agency of Human Services or any of the offices, departments or programs that comprise the Agency.

1.2 “AHS” means the Vermont Agency of Human Services.

1.3 “Client” means an individual or family who is voluntarily served by a department, office, program, Contractor or grantee of the Agency of Human Services.

1.4 “Contractor” means an individual or entity with whom the Agency or any of its departments, offices, or programs has a contract to provide personal services.

1.5 “Employee” means any person who works in a full-time, part-time, temporary or contractual position for the Agency or any of its departments, offices, or programs.

1.6 “Grantee” means an individual or entity with whom the Agency or any part thereof has a grant to provide personal services.

1.7 “Program” means a set of services, (such as determining and processing ANFC benefits, verifying and setting up delivery for WIC foods) for which the Agency bears fiscal responsibility.

1.8 “Administrative Obligations” means activities pursuant to federal or state laws or regulations (such as verification of eligibility, verification of service delivery, detection of fraud, monitoring of quality assurance, audit of expenditure reports) which provide for accountability in the use of public funds.

II. Basic Principles

2.1 Presumption of Confidentiality

All information specific to, and identifying of, individuals and families is presumed to be confidential and subject to these standards. Employees shall not disclose the information unless a specific exception to the presumption applies or the disclosure is authorized by the client, a court or as otherwise authorized by law or rule.

2.2 Existing Statutes

These rules are not intended to expand or diminish current provisions in law relating to disclosure of confidential information.

2.3 Information Collection

Employees shall collect and record only that information needed to fulfill the goal of serving the client and meeting administrative or legal obligations.

2.4 Informing Clients

At the initial meeting with each client, or within two weeks, employees shall review and offer to provide the rules for access to information to the client.

III. Permissible Disclosures

3.1 Client consent

No information about a client shall be released without prior consent from the client, unless directly connected with the administration of a program or necessary for compliance with federal or state laws or regulations.

3.2 Sharing “Non-identifiable” Information

Information that does not identify a client may be used for statistical research, forecasting program needs, or other such purposes.

3.3 Public Information

Information defined as public by 1 VSA & 317 or other applicable statute is available to the public. The procedures in the public records statute shall be followed before public information is released.

3.4 Information Sharing for Administrative Purposes

Employees may share information which is necessary to satisfy the Agency’s administrative obligations. Departments will develop written agreements limiting the kinds of information to be shared when programs are jointly administered by different Departments. No information shall be released to a person or entity that is out of state, unless directly connected with the administration of a program or necessary for compliance with federal or state laws or regulations.

3.5 Disclosure Without Consent in Limited Circumstances

Employees must release sufficient information to comply with mandatory reporting requirements for cases involving the abuse, neglect, or exploitation of children and persons who are elderly or who have disabilities. Information may be released without consent when Vermont law creates a duty to warn identified individuals of potential harm to their person or property, in response to court orders, or to investigate or report criminal activity as required by federal or state law or regulation. Only information relevant to the situation shall be disclosed. The employee shall document the date, purpose and content of the report, the name, address and affiliation of the person to whom the information was released, and shall notify the client that the information was disclosed.

IV. Procedures Related to Consent

4.1 Obtaining Informed Consent

Prior to releasing confidential information the Agency shall obtain the client's informed consent. This includes providing information about consent in a language and format understandable to the client. Reasonable accommodations shall be made for special needs based on the individual or family's education, culture, or disability. Employees shall inform clients that granting consent is not a pre-requisite for receiving services, and shall explain that they may apply for services separately.

4.2 Consent of Minors to Release of Information

Employees shall obtain the consent of a minor client to release information concerning treatment for which parental consent is not required.

4.3 Format for Consent to Share Information

Consent for the sharing or release of information shall ordinarily be in writing. If an emergency situation requires granting of verbal consent, written consent shall be obtained at the next office visit or within thirty days, whichever comes sooner. Required information will include:

1. Names of the people about whom information may be shared.
2. A checklist of the kinds of information to be shared.
3. A checklist of the departments within the Agency to receive the information.
4. A statement or date covering expiration of consent.
5. A statement about procedures for revoking consent.
6. Signature of individuals covered by the consent, or their parents or guardians.
7. Signature of the individual explaining the consent process with their position and job title.
8. A space to provide individualized instructions.

A copy of the consent form shall be provided to all signatories.

4.4 Client Access to Records

Unless prohibited by federal or state law or regulation, clients shall be permitted to view and obtain copies of their records. Each department within the Agency shall have written procedures which permit clients to verify personal information they have provided for accuracy and completeness and for placing amendments to the information in their files. Employees shall take reasonable steps to present records in a form accessible to the client, including but not limited to large type format or verbal review. A fee not to exceed the actual cost of copying may be charged for records exceeding 10 pages. This fee shall be waived if it would prohibit access.

V. Procedures to Protect Confidentiality

5.1 Staff Training

All AHS employees and all AHS volunteers and interns, shall be instructed in these rules. AHS shall train their Contractors and grantees who shall, in turn, provide the same instruction for their employees, interns, and volunteers.

5.2 Response to Requests for Information

An employee shall not respond to requests from outside the Agency for information about clients even to acknowledge that the person is a client, unless authorized. If a client has consented to or requests that information be released, the employee shall comply with the request.

5.3 Designated Individual

Each agency or department shall appoint one or more trained staff members to be responsible for responding to all requests for client information when there is no written consent to release, and no statutory or administrative authority permitting release of the requested information. These individuals shall be specially trained in maintaining confidentiality. A list of the designated individuals for each department and office shall be maintained in the Attorney General's Office, Human Services Division.

5.4 Affirmation of Understanding

Employees shall sign an affirmation that they will comply with these rules. This affirmation shall be part of their personnel files. Supervisors shall review this affirmation during annual evaluations. Violation of these rules shall result in disciplinary action.

5.5 Written Agreements with Grantees or Contractors

The following assurance, or one similar to it, will be included in all AHS grants/contracts signed after these rules have been approved:

[Grantee/Contractor] agrees to comply with the requirements of AHS Rule No. 96-23 concerning access to information. The Contractor shall require all of its employees to sign the AHS Affirmation of Understanding or an equivalent statement.

5.6 Client Referrals

When referring a client to another agency for services, if the referral does not meet the criteria for permissible disclosures under Section 3.4, the initial agency shall obtain the consent of the client for the referral and alert the receiving agency that confidential client information accompanies the referral.

5.7 Documentation of Disclosure

Requests for disclosures of client information shall be maintained in the client's file if the request does not meet the definition of a permissible disclosure under Section 3.4. Employees shall document in writing any information actually disclosed, along with the name of the person/agency to whom it was disclosed and the date of the disclosure. When permissible disclosures are made under Section 3.4, documentation may be limited to the name of the department/agency/program to whom the disclosure was made.

VI. Information Systems

6.1 Computerized Information

When developing a computerized data system, the Agency shall:

1. Develop security procedures consistent with the rule;
2. Instruct staff in the security procedures;
3. Inform clients if a computerized system is being used;
4. Establish written agreements with participating agencies outlining procedures for sharing and protecting information.
5. Develop security procedures in relation to the transmission of information.

6.2 Security Procedures

The Agency shall develop a protocol which is consistent with the requirements of this rule to safeguard confidential client information. Contractors and grantees shall also develop a protocol or shall adopt the protocol of the Agency. The protocol shall be designed to safeguard written information, data in computer systems, and verbal exchange of information. The protocol shall prohibit unauthorized access to records and include an appropriate disciplinary process for violations of the security rules.

6.3 Procedures

Written procedures for implementing these rules shall be used as the basis for employee Instruction and shall be available for review in the Agency Central Office.

AGENCY OF HUMAN SERVICES
103 South Main Street
Waterbury, Vermont 05676

VII. AFFIRMATION OF UNDERSTANDING STATEMENT

As a Contractor for the State of Vermont, I affirm that I have read the Agency of Human Services (AHS) Rule No. 96-23 concerning Access to Information, and that I agree to comply with the requirements of AHS Rule No. 96-23.

I shall require all of my employees performing services under this contract, to sign an affirmation of understanding statement. Employee statements need not be sent to the State. However, they shall remain in Contractor's personnel records. The State can request copies of such documents if necessary.

Name of Company (Print or type)

Date

Authorized Signature

Title