1. **Parties.** This is a contract for services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and the Brattleboro Retreat, with a principal place of business in Brattleboro, VT (hereafter called "Contractor"). The Contractor's form of business organization is a Vermont non-profit corporation. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this Contract is to provide participation in a pilot alternative payment model for the delivery of inpatient services to the Vermont Medicaid and Level 1 populations. Detailed services to be provided by the Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed $28,633,834.00. The Contractor is not obligated to continue providing the services described in Attachment A if this maximum amount has been reached.

4. **Contract Term.** The period of Contractor's performance shall begin on March 1, 2021 and end on December 31, 2021. This contract may be renewed upon mutual agreement by both Parties for up to three (3) additional one-year terms.

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

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

7. **Contacts and Notices.** The contacts for this award are as follows:

	State Fiscal Manager	State Program Manager	For the Contractor
Name:	Meaghan Kelley	Sandi Hoffman	Elizabeth Wohl
Phone #:	802-585-0302	802-798-2186	802-258-3070
E-mail:	meaghan.kelley@vermont.gov	Sandi.hoffman@vermont.gov	ewohl@drm.com

8. **Termination for Convenience.** This contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this contract for (1) all services provided to and accepted by the State prior to the effective date of termination And (2) any services necessary to ensure the safe transition of Level 1 care and/or service to other providers.

9. **Sole Source Contract for Services.** This Contract results from a “sole source” procurement under State of Vermont Administrative Bulletin 3.5 process and Contractor hereby certifies that it is and will remain in compliance with the campaign contribution restrictions under 17 V.S.A. § 2950.

10. **Attachments.** This contract consists of 37 pages including the following attachments, which are incorporated herein:

Attachment A - Specifications of Work to be Performed

Attachment B - Payment Provisions
Attachment C – Standard State Provisions for Contracts and Grants
Attachment E - Business Associate Agreement
Attachment F - Agency of Human Services' Customary Contract Provisions
Attachment G - "No Refusal of Care" and "Level One Patient" Definitions and Utilization Review Protocol
Attachment H- Subcontractor Compliance Form

The order of precedence of documents shall be as follows:

1). This document
2). Attachment C
3). Attachment A
4). Attachment B
5). Attachment E
6). Attachment F
7). Attachment G
8). Attachment H

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

BY THE STATE OF VERMONT:

M.K.S.

Michael K. Smith, Secretary AHS Date
280 State Drive
Waterbury, VT 05671-1010
Phone: 802-241-0440
Email: Mike.Smith@vermont.gov

BY THE CONTRACTOR:

E-SIGNED by Louis Josephson on 2021-03-11 15:16:58 GMT

Louis Josephson, Ph.D. Date
President & CEO
Brattleboro Retreat
Anna Marsh Lane
Brattleboro, VT 05301
Email: ljosephson@brattlebororetreat.org

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED

1. Inpatient Stays Criteria

Contractor agrees to to provide Inpatient Days, defined as an admission of at least one night, for:

- Medicaid child, adolescent, and adult stays where Medicaid is the primary payer.
- Level 1 stays not covered by commercial insurance or other non-Medicaid payor sources.

2. Contractor Obligations

Contractor shall maintain compliance with all state and federal laws and regulations for licensed and certified psychiatric hospitals and for designated hospitals and shall comply with the following requirements set by the State.

a. Bed Capacity Requirements:

- Contractor agrees to maintain capacity for the agreed upon number of expected Inpatient Days for Medicaid members as outlined in Attachment B.
- Specific to Level 1 beds:
    - Contractor shall maintain 26 Level 1 emergency examination or court-ordered observation psychiatric inpatient beds.
        - For the purposes of this Contract, emergency examination beds means Level 1 beds that are available to patients who are admitted for an emergency examination pursuant to 18 V.S.A. § 7508(a) and meet the Level 1 definition outlined in Attachment G.
        - Court-ordered observation psychiatric inpatient beds means Level 1 beds that are available to patients who are admitted for examination of competency and/or sanity pursuant to 13 V.S.A. § 4815(g) and meet the Level 1 definition outlined in Attachment G.
        - Contractor's Level 1 beds shall be no-refusal beds as defined in Act 79.
        - State may request the Contractor to provide additional Level 1 bed capacity beyond the no-refusal bed capacity. The decision to extend the capacity will be made on a case-by-case basis and mutually agreed upon by both parties.
        - Should Contractor refuse any clinically appropriate referred admission to a Level 1 unit, the Contractor's chief medical officer or designee shall, at the request of the Care Management Director, detail in writing, the clinical justification for the refusal. This written documentation shall be sent to the Department of Mental Health (DMH) Care Management Director within one business day of the refusal.

    - Inpatient Movement for Level 1 Beds:
        - During each Level 1 inpatient admission, Contractor agrees to determine on a weekly basis whether patients continue to meet the Level 1 definition outlined in Attachment G or if they would be appropriate for transfer to a non-Level 1 unit. Such determination will be made in conjunction with the DMH Utilization Review process and clinical review with the inpatient treatment team during regularly scheduled meetings.
            - Potential disruption to patient treatment plan or relationship with the treatment team will be considered but will not be the sole clinical

determinant for remaining on a Level 1 Unit or being identified as a Level 1 patient.
- Once DMH and Contractor agree that a patient does not meet Level 1 criteria and is clinically appropriate for transfer to a non-Level 1 unit, Contractor and DMH shall expedite the transfer process.
- If there is not agreement as to whether a patient is ready to transfer to a non-Level 1 unit, Contractor's Medical Director commits to discussing with the DMH Medical Director/designee within the next business day following the established lack of agreement or as soon as practicable.

▪ When a patient on another unit demonstrates clinical need for Level 1 services, Contractor will communicate with the DMH Mental Health Services Director, or designee, to discuss the needs of the system as it relates to the use of a Level 1 bed. In the case of emergent clinical needs that require an immediate change in placement between the Level 1 and non-Level 1 units, the Contractor will communicate with the Mental Health Services Director or designee as soon as practicable thereafter to discuss the change.

b. Admission and Discharge Capacity

Contractor shall provide 24 hour a day/7 day a week admission and discharge capacity for all patients covered under this agreement.

c. Service Authorization Submission Requirements.

Contractor shall fully participate with the State's care management system to ensure that every patient is receiving medically necessary services in the appropriate setting and that patients are discharged to appropriate services and settings in a clinically appropriate, timely manner. This participation shall include utilization review.
- Contractor shall submit admission notification forms within 24 hours of admission.
- Contractor shall submit written documentation of any refusal of an Inpatient Stay to DMH Care Management within 24 hours of refusal.
- Contractor shall continue to submit authorization requests and clinical documentation to support admission and continued stay under the existing practices established by DMH and the Department of Vermont Health Access (DVHA).

d. Case Consultation Requirements:

- Contractor shall continue weekly case consultation meetings specific to children and adolescents with DVHA's Quality and Clinical Improvement Unit, DMH, and the Department for Children and Families to assist disposition issues.
- Contractor shall request a case consultation with DMH or DVHA for adult inpatient admissions if any concerns are identified.

e. Case Notes and Discharge Planning Requirements:

- Contractor shall submit case notes demonstrating medical necessity, the discharge plan, final physician's note, and the current medication list within three (3) business days of discharge.
- Upon the State's request, within a reasonable time Contractor shall provide additional clinical information in the medical record.

f. Reporting Inpatient Bed Availability Requirements
Contractor shall report to the State, in real time, the number of available inpatient beds via the electronic bed board reporting system made available to Contractor by the State.

g. Minimize Use of Restraints and Seclusion

Contractor shall minimize the use of restraints, both physical and chemical, and seclusion in compliance with Center for Medicare and Medicaid Services (CMS) standards. The Contractor shall continue participation in the Substance Abuse and Mental Health Services Administration (SAMHSA) Six Core Strategies for the Reduction of Seclusion and Restraint. Contractor shall comply with the Rule Establishing Standards for Emergency Involuntary Procedures. Occurrences of restraint, seclusion, and emergency involuntary medication shall be documented using a Certificate of Need (CON) form with core data elements and clinical content identified by DMH. The CON forms shall be submitted to DMH following the discontinuation of the emergency involuntary procedure or no later than twice per month on the 1st and 15th of each month.

h. Patient Escorts and Transports

Contractor shall be responsible for all escorts of patients within the facility and transports to any other treating facility for medically necessary care. All escorts/transports within the responsibility of Contractor shall be conducted in a manner that prevents physical and psychological trauma; respects the privacy of the individual; and represents the least restrictive means necessary for the safety of the patient given the medical condition and risk of danger or elopement of the patient at the time of the transport. All other transports shall be arranged by the State, in accordance with the DMH *Involuntary Transportation Manual and Standards*, available here: https://mentalhealth.vermont.gov/sites/mhnew/files/documents/Manuals/Transportation_Manual_Standards_2016-06-27.pdf.

i. Patient Representative

Contractor shall ensure that a patient representative is available to all patients consistent with 18 V.S.A. § 7253(1)(J) and Act 140 (2020) and ensure that the patient representative be a regular presenter at Contractor's employee ortientation programming.

j. Mental Health Care Ombudsman

Contractor shall ensure that the Mental Health Care Ombudsman has access to all patients.

k. Emergency Preparedness Plan

Contractor shall maintain an emergency preparedness plan for inpatient evacuation, transfer, and continuity of care of patients in accordance with requirements set forth by State of Vermont, Department of Health, Board of hospital licensing standards. The Contractor shall provide that plan to the State upon request.

3. Annual Perforance Indicators

At a minimum for this contract period, annual performance indicators will include:

a. Hospital-Based Inpatient Psychiatric Services Core Measure Set (HBIPS)

i) HBIPS -1: Admission screening for violence risk, substance use, psychological trauma history and patient strengths completed
ii) HBIPS-2: Hours of Physical Restraint Use
iii) HBIPS-3: Hours of Seclusion Use
iv) HBIPS-4: Patients Discharged on Multiple Antipsychotic Medications
v) HBIPS-5: Patients Discharged on Multiple Antipsychotic Medications with Appropriate Justification
vi) HBIPS-6: Post Discharge Continuing Care Plan Created
vii) HBIPS-7: Post Discharge Continuing Care Plan Transmitted to Next Level of Care Provider Upon Discharge

b. DMH/DVHA Specific Measures

The following performance indicators will be reported to DMH and DVHA on a monthly basis, on or before the 30th day of the following month, will include:

i. Access to Care
    1. Percentage of bed days purchased with Medicaid funding filled during the month.
    2. Demonstrated progress in the re-opening of closed beds
    3. Comparison of SFY21 to prior years of number of admissions and length of stay by population and department.
    4. Comparison of time of referral to time of acceptance or denial.
    5. Number of involuntary admissions.
ii. Process of Care
    1. Percentage of admissions notification forms received within 24 hours.
    2. Percentage of case notes and discharge paperwork received within three (3) days of discharge.
iii. Clinical Outcomes
    1. Results of inpatient consumer survey.
    2. Number of members re-admitted within 15 and 30 days.
    3. Percentage of follow-up after hospitalization with a mental health provider at seven (7), and 30 days post-discharge.

Parties will together work to determine additional quality metrics by June 1, 2021.

4. Communication with DMH Legal Counsel

Contractor and/or Contractor's legal counsel shall maintain active communication with the DMH Legal Division to adhere to all legal requirements as required for any patient in the care and custody of the Commissioner of DMH. Legal requirements include, but are not limited to:

a. Completion of all documentation required for Act 114 (court-ordered medication administration)
b. 30-day reviews of involuntary medication orders
c. Providing medical records to Assistant Attorneys General and Legal Aid attorneys in connection to involuntary treatment/medication admissions
d. Seeking DMH approval for the discharge of patients in the custody of the DMH Commissioner
e. Availability of physicians/staff who may be required to testify at involuntary treatment/medication hearings
f. Notification of inability to admit patients sent for inpatient evaluation if no bed is available

Contact information for DMH Legal Division:

	DMH GENERAL COUNSEL	ASSISTANT ATTORNEY GENERAL
Name	Karen Godnick Barber	Matt Viens
Address	NOB 1 South, 280 State Drive Waterbury, VT 05671-1010	NOB 1 South, 280 State Drive Waterbury, VT 05671-1010
Email	karen.barber@vermont.gov	Matt.viens@vermont.gov

5. Reporting Requirements

a. Contractor, in accordance with the Designated Hospital Event Reporting Protocol, shall provide information to DMH on any reportable event involving a patient cared for under this agreement. A verbal report shall be made to the DMH Commissioner during working hours and to the Vermont Psychiatric Care Hospital (VPCH) Admissions office during off hours and weekends. Such reports shall be followed by a report in writing within 24 hours of the occurrence in a format provided by the State and faxed to (802) 828-1715 and emailed to the DMH Quality Nurse at Norman.McCart@vermont.gov. An e-mail acknowledging receipt will be sent to the person completing the form.

b. Contractor shall provide DMH with all required reports identified herein. Contractor shall promptly notify DMH when CMS or other regulatory or accrediting body appears for a survey/inspection visit. Contractor shall also provide timely notification to the DMH Commissioner of any initial exit visit findings as well as the formal findings of site visits. DMH will notify Chairs of the House Human Services and Senate Health and Welfare Committees. Reports of such visits, when received, shall be promptly submitted to the DMH Commissioner and, following necessary redactions of identifying patient information wherein disclosure might jeopardize a patient's privacy or protected health information, DMH will provide same to the Chairs of the Legislative Committees of jurisdiction.

c. DMH shall have full access to all records involving a patient in the custody of the DMH Commissioner, and the appropriate paying agency shall have access to all records involving any patient admission requiring payment authorization by that agency.

Performance and Monitoring Improvement:
Contractor must notify the State immediately when it becomes aware of any situation resulting in or likely to result in a significant impairment of the contractor's ability to perform the contracted services.

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

	STATE REPRESENTATIVE	CONTRACTOR
Name	Office of General Counsel DVHA	Elizabeth Wohl Downs Rachlin Martin PLLC
Address	NOB 1 South, 280 State Drive Waterbury, VT 05671-1010	28 Vernon Str. Suite 501 Brattleboro, VT 05301
	ahs.dvhalegal@vermont.gov	ewohl@drm.com

Except as otherwise expressly stated in this agreement, the parties agree that notices may be sent by electronic mail except for the following notices which must be sent by United States Postal Service certified mail: termination of contract, damage claims, breach notifications, change to Contractor's representatative listed in the table above.

State Monitoring of Contract:
The parties agree that the State Program Manager is solely responsible for the review of invoices presented by the Contractor.

Subcontractor Requirements:
Per Attachment C, Section 19, if the Contractor chooses to subcontract work under this agreement, the Contractor must first fill out and submit the Subcontractor Compliance Form (Attachment 2 – Required Forms) in order to seek approval from the State prior to signing an agreement with a third party. Upon receipt of the Subcontractor Compliance Form, the State shall review and respond within five (5) business days. A fillable PDF version of this Subcontractor Compliance Form is available upon request from the DVHA Business Office. Under no circumstance shall the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Subcontractor Compliance Form to: AHS.DVHAGrantsContracts@vermont.gov

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

ATTACHMENT B
PAYMENT PROVISIONS

1. General Payment Provisions

The State agrees to compensate Contractor for actual services performed in accordance with the methodology described below,provided such services are within the scope of the Agreement and are authorized as provided for under the terms and conditions of this Contract. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this Attachment.

2. Payment for Inpatient Days

Effective for Inpatient Days beginning March 1, 2021 and ending December 31, 2021, State shall issue monthly prospective payments to Contractor as reimbursement for Inpatient Days. Inpatient Days (both voluntary and involuntary admissions) when Medicaid is not the primary payer are excluded. All other services, rendered by Contractor for Vermont Medicaid members will continue to be reimbursed using existing Medicaid reimbursement methodologies. The time period March 1 through December 31, 2021 is defined as Alternative Payment Model (APM) Year 1.

For the APM Year 1, the prospective monthly payment per Inpatient Day (APM PAYMENT) is computed using a weighted average per diem amount of $1,838.33.

3. Methodology for PAYMENT

The per diem amount in the APM PAYMENT for APM Year 1 was derived using the following factors:

- Historical Contractor inpatient utilization incurred by the Department of Mental Health (DMH) and DVHA;
- Projected Contractor inpatient utilization in APM Year 1;
- Recent cost-per-day values incurred by Contractor for direct care, fixed and administrative costs; and
- A negotiated allowance for annual changes for direct care, fixed and administrative costs.

The APM PAYMENT for APM Year 1 was derived by multiplying the per diem amount of $1,838.33 by the number of expected Inpatient Days. The State shall make a monthly APM PAYMENT to Contractor as shown in Table 1.

Table 1. APM Year 1

APM Year 1	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Expected Inpatient Days	1,240	1,320	1,426	1,410	1,674	1,674	1,680	1,736	1,680	1,736
Monthly Payment Amount	$2,781,058	$2,781,058	$2,781,058	$2,781,058	$2,918,267	$2,918,267	$2,918,267	$2,918,267	$2,918,267	$2,918,267

4. Claims Submission Requirements

Contractor will submit claims for Inpatient Days consistent with existing Medicaid claims submission requirements and Level 1 requirements outlined below. For inpatient stays where the Medicaid patient had service days prior to and after the start of APM Year 1, State will pay any Inpatient Days incurred through February 28, 2021 on a fee-for-service basis. For these patients where the Inpatient Days are for service dates on or after March 1, 2021, no payment will be made through fee-for-service. These days are included in the APM PAYMENT. Claims for all other services rendered by Contractor for Vermont Medicaid members will continue to be reimbursed using existing methodologies.

This payment methodology will require claim processing system modifications to allow for zero-dollar payment on future Inpatient Days claims. These modifications will require additional time to implement after the effective date of this agreement. On an ongoing basis, as needed until the claim processing system is modified, the State will instruct the claims processor to recoup payments made on any days incurred on or after March 1, 2021, for which a fee-for-service payment was made. Parties agree that any fee-for-service payments on claims covered by the APM PAYMENT are an overpayment, and the State is entitled to recoup these payments. This activity will not require Contractor to resubmit claims. To prevent Contractor from having to reimburse the State for duplicate claims payments, State will initiate weekly recoupments. Should the State take longer than sixty (60) days to recoup any such overpayments on properly submitted claims, such delay will not result in those overpayments being treated as false claims.

a. Level 1 Claims Submission Requirements:

For Level 1 patients with third party or Medicare insurance, the third party or Medicare will be the primary payer. Differences in these payments received by Contractor and the Reasonable Actual Costs that the State is required to pay Contractor for providing the care under Act 79 will be settled in the Year-End Reconciliation process as set forth in Section 6 of Attachment B.

"Reasonable Actual Costs" for this Contract shall be defined as all direct costs supporting the Level 1 unit, including but not limited to staffing costs, physician costs, patient supplies, pharmaceuticals, direct administrative costs, office expenses, staff education, physician continuing education, and ancillary services. Ancillary services will be determined using the Schedule C Part 1 of the most recent Cost Report to define the cost to charge ratio that will be applied to the charges determined from the Provider, Statistical & Reimbursement System (PS&R). Overhead will also be allocated to the unit, using percentages that will be calculated using Schedule B Part 1 of the most recent Cost Report, excluding depreciation. Contractor shall maintain discrete auditable records which will be used to determine Reasonable Actual Costs. Cost per bed will be established using the Level 1 cost reporting.

Procedures for establishing a Level 1 billing approval are in the Psychiatric Inpatient Billing Procedures Manual.

5. Risk Corridor

The APM PAYMENT in this contract is a risk sharing arrangement. In the pilot APM Year 1, Contractor shall be subject to the following risk corridor.

a. Utilization Risk Corridor

The Utilization Risk Corridor is defined as the number of Inpatient Days that wrap around the days that State has committed to purchase on a prospective basis in the APM Year. This corridor will be determined using a percentage threshold above and below the value of prospective purchase days. In APM Year 1, the utilization corridor is 98% to 102% of the total prospective days purchased of 15,576.

i. The Utilization Risk Corridor, therefore, shall be applied as follows for APM Year 1 and calculations shall be factored into the Year-End Reconciliation.
    1. If the actual number of Inpatient Days utilized by Vermont Medicaid members is between 15,576 and 15,888, then Contractor shall be liable for the costs to serve patients for these days. If the actual number of Inpatient Days utilized by Vermont Medicaid members is greater than 15,888 during APM Year 1, then the State will reimburse Contractor an additional amount outside of the APM PAYMENT for each day above 15,888 at a rate of $1,838.33 per day.
    2. Conversely, if the actual number of Inpatient Days utilized by Vermont Medicaid members is between 15,264 and 15,576, Contractor will be entitled to retain 100% of the APM prospective payments. If the actual number of Inpatient Days utilized by Vermont Medicaid members is less than 15,576 during APM Year 1, then Contractor shall reimburse back to the State an amount equivalent to $1,838.33 per day for each day below 15,264.

ii. If during the contract, the State or Contractor determines that the Inpatient Days utilization are 10% or more under the expected utilization as specified in Table 1 of Section 1 of Attachment B, then the parties shall meet to discuss utilization or costs. Evaluations will occur no less frequently than monthly unless the parties agree to evaluate utilization less frequently.

iii. Parties agree to monitor changes in demand/delivery during the APM Year 1 with specific regard to impacts that may be resulting from the current COVID-19 public health emergency. If during the duration of the COVID-19 public health emergency related shifts are noted that were not captured in part or in full during the process to set the APM PAYMENT, Parties shall meet to discuss these shifts and potential adjustments to the Utilization Risk Corridor.

iv. Notwithstanding the provisions above, at the State's sole discretion, Contractor may qualify for an adjustment to the lower boundary of the utilization risk corridor. This adjustment is tied to ensuring that Level 1 admissions continue to be prioritized among all inpatient admissions. Contractor will be entitled to an offset of any monies owed back to the State if the anticipated Vermont Medicaid days do not meet the required 98% of total target of 15,576, or 15,264 days, under the following conditions:
    1. If Contractor had a refusal rate of 7% instead of 8%, then the lower bound overall utilization is -2.25%, not -2.00% from target.
    2. If Contractor had a refusal rate of 6% instead of 8%, then the lower bound overall utilization is -2.50%, not -2.00% from target.
    3. If Contractor had a refusal rate of 5% instead of 8%, then the lower bound overall utilization is -2.75%, not -2.00% from target.
    4. If Contractor had a refusal rate of 4% instead of 8%, then the lower bound overall utilization is -3.00%, not -2.00% from target.
    5. If Contractor had a refusal rate of 3% instead of 8%, then the lower bound overall utilization is -3.25%, not -2.00% from target.
    6. If Contractor had a refusal rate of 2% instead of 8%, then the lower bound overall utilization is -3.50%, not -2.00% from target.
    7. If Contractor had a refusal rate of 1% instead of 8%, then the lower bound overall utilization is -3.75%, not -2.00% from target.
    8. If Contractor had a refusal rate of 0% instead of 8%, then the lower bound overall utilization is -4.00%, not -2.00% from target.

6. Year-End Reconciliation

The State will complete a Year-End Reconciliation process within 150 days after the close of APM Year 1. In order to meet this deadline, Contractor agrees to provide all information necessary, as reasonably identified by the State, to complete the Year-End Reconciliation within 90 days after the end of APM Year 1. This includes, , adjudicated and approved claims submissions for patients who discharged prior to the end of APM Year 1, census information for days for patients who did not discharge by the end of APM Year 1, and financial information pertaining to the Level 1 Cost Settlement through the end of APM Year 1. If the State reasonably determines that additional information is necessary, Contractor will provide such information.

a. Level 1 Cost Settlement

The State shall reimburse Contractor's Reasonable Actual Costs, net of all other revenues, for providing care capacity for 26 Level 1 Beds, in accordance with the requirements of Act 79 (2012). The State and Contractor agree to settle on an annual basis the difference between all revenues (including interim daily payments made by DMH or the State and APM PAYMENTS) and Reasonable Actual Costs. A mid-year review may be conducted at the request of either party to assess whether the interim rate needs to be adjusted. A final review consistent with Act 79 legislation will be for the fiscal period ending December 31st of each year for which this contract is in force.

If, after completion of that review, there is a difference in Reasonable Actual Costs as defined in this contract and actual costs incurred, and the State disallows expenditures, Contractor may request that the State review the disallowed expenditures in accordance with Attachment B, Section 8: Dispute Resolution. If there is a disagreement in Reasonable Actual Costs, as defined in this contract, and actual costs incurred by Contractor, Contractor and the State will work together to determine a revised reasonable actual cost definition.

Upon the completion of the Year-End Reconciliation process, if there is a Medicare claim or cost report adjustment resulting in the recovery of a previous reimbursement, Contractor may reopen the reconciliation process to identify additional costs.

b. Utilization Risk Corridor Reconciliation

The calculation of the Utilization Risk Corridor will be conducted utilizing the following information:

- All approved and paid claims submitted by Contractor by March 31, 2022, for APM Year 1; and
- Information as requested by the State provided by Contractor to inform census for Medicaid eligible and Level 1 eligible members in an active Inpatient Day stay at Contractor for which a final claim has not yet been submitted to the State as of March 31, 2022, and

Any monies owed to or by Contractor as a result of the Utilization Risk Corridor reconciliation will be reflected by claims and final census data received by March 31, 2022. Claims or additional census data received after March 31, 2022, for eligible Inpatient Days during APM Year 1 will not be considered in the Utilization Risk Corridor calculation and Contractor will not receive payment for these services under this contract.

c. Combined Settlement

The amounts derived from the application of the Utilization Risk Corridor and the Level 1 cost settlement shall be combined to determine the overall amount owed either to Contractor by the State or to the State by Contractor.

7. APM Year 2 Rate Setting

If Parties agree to extend this Contract to APM Year 2, State and Contractor will negotiate the estimated APM PAYMENT for Year 2 using the most recent financial statement data from Contractor. Due to the timing to

prepare for APM Year 2, it is assumed that the financial statement data and APM PAYMENT for the period March 1, 2021, to September 30, 2021, will be a key factor in this negotiation.

The starting point for negotiating the payment per day that will be used in the APM PAYMENT for APM Year 2, and any adjustments to it described above, does not consider the assumptions in the APM Year 2 payment model for year-to-year cost growth. Cost inflation factors for direct, fixed and admin costs will still be considered in APM Year 2 outside of the calculations described above.

After the Year-End Reconciliation has been completed for APM Year 1, the expected payment per day used to determine the APM PAYMENT in APM Year 2 may be adjusted using the following methodology:

a. If Contractor achieves cost containment during APM Year 1 such that its actual cost per day is below $1,738.18 per day, then the starting point for establishing the negotiation for the payment per day in APM Year 2 will be $1,783.18.
b. If Contractor maintains costs during the performance period such that its actual cost per day is between $1,783.18 and $1,893.48, then the starting point for establishing the negotiation for the payment per day in APM Year 2 will be $1,838.33.
c. If Contractor experiences cost growth during the performance period such that its actual cost per day is greater than $1,893.48 per day, then the starting point for establishing the negotiation for the payment per day in APM Year 2 will be $1,893.48.

Any adjustment to the underlying assumption in the APM PAYMENT in APM Year 2 that may be required resulting from the Year-End Reconciliation in APM Year 1 will be effective for prospective APM PAYMENTS beginning July 1, 2022, in APM Year 2.

8. Dispute Resolution

Contractor may appeal the State's decision to deny, in whole or in part, Reasonable Actual Costs, as defined in this Attachment B, Section 6.a, to the Secretary of the Agency of Human Services. Appeals to the Secretary must be made within 30 days of Contractor receiving a denial of the disallowed expenditures by the State. The AHS Secretary's decision is subject to review pursuant to V.R.C.P. 75. The State shall pay Contractor based on the definition of Reasonable Actual Costs in this contract until there is a final determination of a disallowed expenditure, including a court determination pursuant to V.R.C.P. 75. Upon the final decision, based on the outcome, there will be a settlement payment to Contractor or payback to the State which shall be made within 30 days of the final decision.

ATTACHMENT C: STANDARD STATE PROVISIONS

FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017

1. Definitions: For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

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

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

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

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

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

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

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

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

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

$1,000,000 Each Occurrence

$2,000,000 General Aggregate

$1,000,000 Products/Completed Operations Aggregate

$1,000,000 Personal & Advertising Injury

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

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

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

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

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

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public. **12. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

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

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

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

16. Taxes Due to the State:

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

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

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

D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

A. is not under any obligation to pay child support; or

B. is under such an obligation and is in good standing with respect to that obligation; or

C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

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

In the case this Agreement is a contract with a total cost in excess of $250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54). Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

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

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

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners)

are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

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

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

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

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

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

27. Termination:

A. Non-Appropriation: If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

B. Termination for Cause: Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.

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

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

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

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

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

A. Requirement to Have a Single Audit: The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required. For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends $500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends $750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

A. Certification Regarding Use of State Funds: If Party is an employer and this Agreement is a State-funded grant in excess of $1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

B. Good Standing Certification (Act 154 of 2016): If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT

SOV CONTRACTOR: BRATTLEBORO RETREAT

SOV CONTRACT NO. 41429 CONTRACT EFFECTIVE DATE: MARCH 11, 2021

THIS BUSINESS ASSOCIATE AGREEMENT ("AGREEMENT") IS ENTERED INTO BY AND BETWEEN THE STATE OF VERMONT AGENCY OF HUMAN SERVICES, OPERATING BY AND THROUGH ITS DEPARTMENT OF VERMONT HEALTH ACCESS ("COVERED ENTITY") AND PARTY IDENTIFIED IN THIS AGREEMENT AS CONTRACTOR OR GRANTEE ABOVE ("BUSINESS ASSOCIATE"). THIS AGREEMENT SUPPLEMENTS AND IS MADE A PART OF THE CONTRACT OR GRANT ("CONTRACT OR GRANT") TO WHICH IT IS ATTACHED.

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

The parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

"*Agent*" means an *Individual* acting within the scope of the agency of the *Business Associate*, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c) and includes Workforce members and *Subcontractors*.

"*Breach*" means the acquisition, Access, Use or Disclosure of *Protected Health Information* (*PHI*) which compromises the Security or privacy of the *PHI*, except as excluded in the definition of *Breach* in 45 CFR § 164.402.

"*Business Associate*" shall have the meaning given for "Business Associate" in 45 CFR § 160.103 and means Contractor or Grantee and includes its Workforce, *Agents* and *Subcontractors*.

"*Electronic PHI*" shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 45 CFR § 160.103.

"*Individual*" includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

"*Protected Health Information*" ("*PHI*") shall have the meaning given in 45 CFR § 160.103, limited to the *PHI* created or received by *Business Associate* from or on behalf of Covered Entity.

"*Required by Law*" means a mandate contained in law that compels an entity to make a use or disclosure of *PHI* and that is enforceable in a court of law and shall have the meaning given in 45 CFR § 164.103.

"*Report*" means submissions required by this Agreement as provided in section 2.3.

"*Security Incident*" means the attempted or successful unauthorized Access, Use, Disclosure, modification, or destruction of Information or interference with system operations in an Information System relating to *PHI* in accordance with 45 CFR § 164.304.

"*Services*" includes all work performed by the *Business Associate* for or on behalf of Covered Entity that requires the Use and/or Disclosure of *PHI* to perform a *Business Associate* function described in 45 CFR § 160.103.

"*Subcontractor*" means a Person to whom *Business Associate* delegates a function, activity, or service, other than in the capacity of a member of the workforce of such *Business Associate*.

"*Successful Security Incident*" shall mean a *Security Incident* that results in the unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.

"*Unsuccessful Security Incident*" shall mean a *Security Incident* such as routine occurrences that do not result in unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System, such as: (i) unsuccessful attempts to penetrate computer networks or services maintained by *Business Associate*; and (ii) immaterial incidents such as pings and other broadcast attacks on *Business Associate's* firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to *Business Associate's* Information System.

"*Targeted Unsuccessful Security Incident*" means an *Unsuccessful Security Incident* that appears to be an attempt to obtain unauthorized Access, Use, Disclosure, modification or destruction of the Covered Entity's *Electronic PHI*.

2. Contact Information for Privacy and Security Officers and Reports.

2.1 *Business Associate* shall provide, within ten (10) days of the execution of this Agreement, written notice to the Contract or Grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer of the *Business Associate.* This information must be updated by *Business Associate* any time these contacts change.

2.2 Covered Entity's HIPAA Privacy Officer and HIPAA Security Officer contact information is posted at: https://humanservices.vermont.gov/rules-policies/health-insurance-portability-and-accountability-act-hipaa

2.3 *Business Associate* shall submit all *Reports* required by this Agreement to the following email address: AHS.PrivacyAndSecurity@vermont.gov

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Subject to the terms in this Agreement, *Business Associate* may Use or Disclose *PHI* to perform *Services*, as specified in the Contract or Grant. Such Uses and Disclosures are limited to the minimum necessary to provide the *Services*. *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* and only in compliance with applicable laws and regulations.

3.2 *Business Associate* may make *PHI* available to its Workforce, *Agent* and *Subcontractor* who need Access to perform *Services* as permitted by this Agreement, provided that *Business Associate* makes them aware of the Use and Disclosure restrictions in this Agreement and binds them to comply with such restrictions.

3.3 *Business Associate* shall be directly liable under HIPAA for impermissible Uses and Disclosures of *PHI*.

4. Business Activities. *Business Associate* may Use *PHI* if necessary for *Business Associate's* proper management and administration or to carry out its legal responsibilities. *Business Associate* may Disclose *PHI* for *Business Associate's* proper management and administration or to carry out its legal responsibilities if a Disclosure is *Required by Law* or if *Business Associate* obtains reasonable written assurances via a written agreement from the Person to whom the information is to be Disclosed that such *PHI* shall remain confidential and be Used or further Disclosed only as *Required by Law* or for the purpose for which it was Disclosed to the Person, and the Agreement requires the Person to notify *Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to accomplish such purposes.

5. Electronic PHI Security Rule Obligations.

5.1 With respect to *Electronic PHI*, *Business Associate* shall:

a) Implement and use Administrative, Physical, and Technical Safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312;

b) Identify in writing upon request from Covered Entity all the safeguards that it uses to protect such *Electronic PHI*;

c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of *Electronic PHI*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *Electronic PHI*, and be provided to Covered Entity upon request;

d) Report in writing to Covered Entity any *Successful Security Incident* or *Targeted Unsuccessful Security Incident* as soon as it becomes aware of such incident and in no event later than five (5) business days after such awareness. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available;

e) Following such *Report*, provide Covered Entity with the information necessary for Covered Entity to investigate any such incident; and

f) Continue to provide to Covered Entity information concerning the incident as it becomes available to it.

5.2 Reporting *Unsuccessful Security Incidents. Business Associate* shall provide Covered Entity upon written request a *Report* that: (a) identifies the categories of Unsuccessful Security Incidents; (b) indicates whether *Business Associate* believes its current defensive security measures are adequate to address all *Unsuccessful Security Incidents*, given the scope and nature of such attempts; and (c) if the

security measures are not adequate, the measures *Business Associate* will implement to address the security inadequacies.

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

6. Reporting and Documenting Breaches.

6.1 *Business Associate* shall *Report* to Covered Entity any *Breach* of Unsecured *PHI* as soon as it, or any Person to whom *PHI* is disclosed under this Agreement, becomes aware of any such *Breach*, and in no event later than five (5) business days after such awareness, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available.

6.2 Following the *Report* described in 6.1, *Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Business Associate* shall provide Covered Entity with the names of any *Individual* whose Unsecured *PHI* has been, or is reasonably believed to have been, the subject of the *Breach* and any other available information that is required to be given to the affected *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Business Associate* shall provide information necessary for Covered Entity to investigate the impermissible Use or Disclosure. *Business Associate* shall continue to provide to Covered Entity information concerning the *Breach* as it becomes available.

6.3 When *Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the *PHI* had been compromised.

7. Mitigation and Corrective Action. *Business Associate* shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible Use or Disclosure of *PHI*, even if the impermissible Use or Disclosure does not constitute a *Breach*. *Business Associate* shall draft and carry out a plan of corrective action to address any incident of impermissible Use or Disclosure of *PHI*. *Business Associate* shall make its mitigation and corrective action plans available to Covered Entity upon request.

8. Providing Notice of Breaches.

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Business Associate* was responsible, and if requested by Covered Entity, *Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *Business Associate* shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. *Business Associate* shall be responsible for the cost of notice and related remedies.

8.2 The notice to affected *Individuals* shall be provided as soon as reasonably possible and in no case later than sixty (60) calendar days after *Business Associate* reported the *Breach* to Covered Entity.

8.3 The notice to affected *Individuals* shall be written in plain language and shall include, to the extent possible: 1) a brief description of what happened; 2) a description of the types of Unsecured *PHI*

that were involved in the *Breach*; 3) any steps *Individuals* can take to protect themselves from potential harm resulting from the *Breach*; 4) a brief description of what the *Business Associate* is doing to investigate the *Breach* to mitigate harm to *Individuals* and to protect against further *Breaches*; and 5) contact procedures for *Individuals* to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

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

9. **Agreements with Subcontractors**. *Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Business Associate* must enter into such written agreement before any Use by or Disclosure of *PHI* to such *Subcontractor*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *PHI*. *Business Associate* shall provide a copy of the written agreement it enters into with a *Subcontractor* to Covered Entity upon request. *Business Associate* may not make any Disclosure of *PHI* to any *Subcontractor* without prior written consent of Covered Entity.

10. **Access to PHI**. *Business Associate* shall provide access to *PHI* in a Designated Record Set to Covered Entity or as directed by Covered Entity to an *Individual* to meet the requirements under 45 CFR § 164.524. *Business Associate* shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for Access to *PHI* that *Business Associate* directly receives from an *Individual*.

11. **Amendment of PHI**. *Business Associate* shall make any amendments to *PHI* in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an *Individual*. *Business Associate* shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any request for amendment to *PHI* that *Business Associate* directly receives from an *Individual*.

12. **Accounting of Disclosures**. *Business Associate* shall document Disclosures of *PHI* and all information related to such Disclosures as would be required for Covered Entity to respond to a request by an *Individual* for an accounting of disclosures of *PHI* in accordance with 45 CFR § 164.528. *Business Associate* shall provide such information to Covered Entity or as directed by Covered Entity to an *Individual*, to permit Covered Entity to respond to an accounting request. *Business Associate* shall provide such information in the time and manner reasonably designated by Covered Entity. Within five (5) business days, *Business Associate* shall forward to Covered Entity for handling any accounting request that *Business Associate* directly receives from an *Individual*.

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

14. **Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all the *PHI* is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If *Business Associate* fails to comply with any material term of this Agreement, Covered Entity may provide an opportunity for *Business Associate* to cure. If *Business Associate* does not cure within the time specified by Covered Entity or if Covered Entity believes that cure is not reasonably possible, Covered Entity may immediately terminate the Contract or Grant without incurring liability or penalty for such termination. If neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary of HHS. Covered Entity has the right to seek to cure such failure by *Business Associate*. Regardless of whether Covered Entity cures, it retains any right or remedy available at law, in equity, or under the Contract or Grant and *Business Associate* retains its responsibility for such failure.

15. Return/Destruction of PHI.

15.1 *Business Associate* in connection with the expiration or termination of the Contract or Grant shall return or destroy, at the discretion of the Covered Entity, *PHI* 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 *PHI*. *Business Associate* shall certify in writing and report to Covered Entity (1) when all *PHI* has been returned or destroyed and (2) that *Business Associate* does not continue to maintain any *PHI*. *Business Associate* is to provide this certification during this thirty (30) day period.

15.2 *Business Associate* shall report to Covered Entity any conditions that *Business Associate* believes make the return or destruction of *PHI* infeasible. *Business Associate* shall extend the protections of this Agreement to such *PHI* and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as *Business Associate* maintains such *PHI*.

16. Penalties. *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.

17. Training. *Business Associate* understands its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, *Business Associate* shall participate in Covered Entity's training regarding the Use, Confidentiality, and Security of *PHI*; however, participation in such training shall not supplant nor relieve *Business Associate* of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

18. Miscellaneous.

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

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

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

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

18.5 *Business Associate* shall not have or claim any ownership of *PHI*.

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

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

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for *Business Associate* to return or destroy *PHI* as provided in Section 14.2 and (b) the obligation of *Business Associate* to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT/GRANT PROVISIONS

1. **Definitions:** For purposes of this Attachment F, the term "Agreement" shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term "Party" when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term "Party" shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term "Party" as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term "Party" shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.

2. **Agency of Human Services**: The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.

3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver*):

   Inspection and Retention of Records: In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont's Medicaid program and Vermont's Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).

   Subcontracting for Medicaid Services: Notwithstanding any permitted subcontracting of services to be performed under this Agreement, Party shall remain responsible for ensuring that this Agreement is fully performed according to its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Party in connection with the performance of this Agreement, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Party must retain the authority to revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any requirement of this Agreement. Party shall make available on request all contracts, subcontracts and service provider agreements between the Party,

subcontractors and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

Medicaid Notification of Termination Requirements: Party shall follow the Department of Vermont Health Access Managed-Care-Organization enrollee-notification requirements, to include the requirement that Party provide timely notice of any termination of its practice.

Encounter Data: Party shall provide encounter data to the Agency of Human Services and/or its departments and ensure further that the data and services provided can be linked to and supported by enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: Party shall provide a security plan, risk assessment, and security controls review document within three months of the start date of this Agreement (and update it annually thereafter) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

4. **Workplace Violence Prevention and Crisis Response** (*applicable to any Party and any subcontractors and sub-grantees whose employees or other service providers deliver social or mental health services directly to individual recipients of such services*):

Party shall establish a written workplace violence prevention and crisis response policy meeting the requirements of Act 109 (2016), 33 VSA §8201(b), for the benefit of employees delivering direct social or mental health services. Party shall, in preparing its policy, consult with the guidelines promulgated by the U.S. Occupational Safety and Health Administration for *Preventing Workplace Violence for Healthcare and Social Services Workers*, as those guidelines may from time to time be amended.

Party, through its violence protection and crisis response committee, shall evaluate the efficacy of its policy, and update the policy as appropriate, at least annually. The policy and any written evaluations thereof shall be provided to employees delivering direct social or mental health services.

Party will ensure that any subcontractor and sub-grantee who hires employees (or contracts with service providers) who deliver social or mental health services directly to individual recipients of such services, complies with all requirements of this Section.

5. **Non-Discrimination**:

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by State of Vermont and/or federal funds.

Party further shall 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, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. Employees and Independent Contractors:

Party agrees that it shall comply with the laws of the State of Vermont with respect to the appropriate classification of its workers and service providers as "employees" and "independent contractors" for all purposes, to include for purposes related to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party agrees to ensure that all of its subcontractors or sub-grantees also remain in legal compliance as to the appropriate classification of "workers" and "independent contractors" relating to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party will on request provide to the Agency of Human Services information pertaining to the classification of its employees to include the basis for the classification. Failure to comply with these obligations may result in termination of this Agreement.

7. Data Protection and Privacy:

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

Substance Abuse Treatment Information: Substance abuse treatment information shall be maintained in compliance with 42 C.F.R. Part 2 if the Party or subcontractor(s) are Part 2 covered programs, or if substance abuse treatment information is received from a Part 2 covered program by the Party or subcontractor(s).

Protection of Personal Information: Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be used to distinguish or trace an individual's identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other personal or identifiable information that is linked or linkable to a specific person, such as date and place or birth, mother's maiden name, etc.

Other Confidential Consumer Information: Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

Data Breaches: Party shall report to AHS, though its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal information identified above within 24 hours of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

8. Abuse and Neglect of Children and Vulnerable Adults:

Abuse Registry. Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact though (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

Reporting of Abuse, Neglect, or Exploitation. Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. Information Technology Systems:

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

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

2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

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

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

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

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property.

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

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

Party, in the event of a data breach, shall comply with the terms of Section 7 above.

10. Other Provisions:

Environmental Tobacco Smoke. Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable

federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

2-1-1 Database: If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or contact information as well as accurate and up to date information to its database as requested. The "Inclusion/Exclusion" policy can be found at www.vermont211.org.

Voter Registration: When designated by the Secretary of State, Party 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.

Drug Free Workplace Act: Party will assure a drug-free workplace in accordance with 45 CFR Part 76.

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

ATTACHMENT G

"No Refusal System of Care" and "Level I" Intensive Care Patient Definitions and Utilization Review Protocol

Definition:

No Refusal System of Care

A 24/7 system of inpatient psychiatric hospitals under contract with the Agency of Human Services (AHS) or one of its Departments that admit patients identified as meeting Level I clinical eligibility criteria consistent with the purchased bed capacities at each facility. The collective "no refusal system of care" prioritizes any available Level I bed for utilization to minimize involuntary Level I wait time and address an emergent admission. Should Contractor refuse any referred admission to the Tyler 4 Unit, the Contractor's Chief Medical Officer or designee shall detail, in writing, the clinical justification for the refusal. This written documentation shall be sent to the DMH Care Management Director within one business day of the refusal. The Contractor commits to discussing the refusal and options for potential admission with the DMH Care Management Director and/or DMH Medical Director/designee within the next business day or as soon as practicable.

"Level I" Intensive Care Patient

Patients presenting for involuntary psychiatric admission who have severe psychiatric illness and require intense treatment services will be considered "Level I" patients eligible for enhanced inpatient bed day payment by the Department of Mental Health. This determination shall be made prior to a patient's admission to the Tyler 4 Unit as soon as practicable once DMH receives admission notification from the hospital or within 1 business day of a request by Contractor for Level 1 designation for a previously admitted patient. An exception may be made for patients at other levels of inpatient care who require significant and more than usual resources.

Clinical Eligibility and Severity:

- Patients who are admitted under Emergency Examination or Warrants for Examination;
- Patients who are court ordered for inpatient evaluation;
- Patients in the custody of the Department of Corrections;
- Patients, who, following commitment hearing, are determined to need non-emergency involuntary medication until stabilized and discharged;
- With prior DMH approval, voluntary patients who require significant and more than usual resources.

and who exhibit:

- significant danger to self (either imminent or strongly suggested by patient history) such that significant and more than usual resources are needed to manage the patient's care; or,
- significant danger to others (either imminent or strongly suggested by patient history) such that significant and more than usual resources are needed to manage the patient's care; or,
- significant disruptive behaviors such that significant and more than usual resources are needed to manage the patient's care; or,
- great difficulties caring for or protecting self, such that significant and more than usual resources are necessary to manage the patient's care.

"Significant and more than usual resources" means such interventions as additional staffing on the unit, including 1:1 and 2:1 staffing, or extra psychiatrist or other clinical staff time, repeated restraints or seclusions. The State and the Contractor agree that the Tyler 4 and Linden 1 Unitsare designed and staffed to provide "significant and more than usual resources" when compared to the Contractor's general adult psychiatric milieu.

Care Management:

A DMH Care Manager will be assigned to the Designated Hospital for collaborative care management and implementation of the Clinical Utilization Review Protocol outlined below. The DMH Care Manager will actively monitor and work with hospitals and community resources to identify patients appropriate for step-down facilities from inpatient care settings. The DMH Care Manager will:

- Bring to bear previous treatment recommendations and system-wide treatment plans.
- Assure collaboration between care-givers who have been involved at all levels of care

- Coordinate with the Attorney General's office to facilitate legal processes for hearings, involuntary hospitalization, involuntary medication, adjudication, and/or other legal issues
- Facilitate aftercare coordination, including coordination of care between hospitals and relevant agencies
- Facilitate the coordination of system-wide treatment plans, for targeted individuals with complex treatment needs, across levels of care.

Clinical Utilization Review Protocol

Involuntary Care Notification, Admission Authorization, and Level I Assignment for Enhanced Payment:
Any involuntary admission must be reported to the VPCH Admissions Office. Designated agency (DA) screeners will provide emergency examination application information to VPCH admissions office prior to referral for involuntary care.

Any individual admitted involuntarily will be reviewed by State Utilization Review Care Manager. The DMH Utilization Review Care Manager, based on clinical evaluation provided at the time of admission, will determine if the admission is a Level I patient, based upon criteria above, and eligible for enhanced payment. This determination is only for immediate enhanced payment and does not preclude settlement of "real and actual" expenditures as part of the annual cost reconciliation process outlined in the payment provisions.

The Utilization Review Care Manager in consultation with the DMH Medical Director or Psychiatrist Designee Will:

- certify the admission as Level I and identify the continued stay review periodicity; or
- certify the admission as acute involuntary as agreed upon by nationally recognized evidence-based validated utilization review assessment tool such as McKesson and identify the continued stay review periodicity

Continued Stay Reviews:
Any individual involuntarily admitted to Tyler 4 will be reviewed by State Utilization Review Care Manager. Continued Stay Review will be determined by the DMH Utilization Review Care Manager. The Contractor will provide clinical information requested by the Utilization Reviewer to authorize the period of inpatient care during the period of time under review. Any continued stay review that appears to no longer meet inpatient or Level I patient clinical eligibility criteria will be referred to the State Care Manager assigned to the DMH for concurrent review. Only after consultation between the DMH Care Manager and review between the DMH Utilization Review Care Manager with the DMH utilization review representative, a continued stay determination will be made.

The DMH Utilization Review Care Manager in consultation with the DMH Medical Director or Psychiatrist designee will:

- certify the continued stay as Level I involuntary
- certify the continued stay as acute, voluntary or involuntary, and identify the continued stay review periodicity; or
- certify the continued stay as "awaiting discharge" level of care and the basis for the determination; or
- certify no inpatient level of care being met and issue payment denial.

For DMH tracking purposes with Level I inpatient providers, and evaluation of Level I inpatient bed utilization for annual real, actual cost reconciliation, the aforementioned certifications for Continued Stay Reviews will:

- Authorize Level I clinical eligibility criteria as being met and identify subsequent continued stay review date. Continuing Level I enhanced payment clinical eligibility criteria will consider intensity and duration of treatment services and routine documentation of:
  - The need for continued allocation of significant and more than usual resources to maintain the safety of the patient, other patients, or staff;
  - intractable mental illness symptomology, ongoing behavioral dysregulation and instability with demonstrated treatment plan modifications;
  - complex medication management that must occur in an acute inpatient setting;
  - active daily restorative interventions/services not available in alternate level of care settings.

This authorization level maintains enhanced payment for inpatient billing and coding purposes; or

- Authorize "acute" level of care (Level I patient remains acute, no longer requires additional Level I resources, and internal transfer to other units is possible*) and effective date. This authorization level maintains eligibility for inpatient payment at the established 76.4 % reimbursement rate outlined in the payment provisions (Attachment B). (*If transfer to another unit cannot be mutually agreed to by both the Contractor and the State, the authorization level will be made and tracked by State, but enhanced payment will not be denied. Such determinations will be reviewed, and any financial adjustments made during the annual cost reconciliation process); or

- Authorize "awaiting discharge" level of care (a former Level I patient is no longer acute, and facility is actively working toward discharge) and effective date. Patients with complicated legal status or significant aftercare planning complexities may be in this level of care. This authorization level maintains payment for inpatient billing and will be tracked by State, but notifies providers of Level I units that acute clinical eligibility criteria is no longer met; or

- Deny awaiting discharge clinical eligibility criteria as being met and level of care change effective date. This determination will only be made when transfer to an alternative level of care is appropriate and has been offered and declined by the inpatient facility. This determination will result in a denial of payment authorization for continued stay.

Patients in Level I unit beds, who continue to require psychiatric support services but are determined to no longer require Level 1 services, are eligible for internal transfer or "awaiting discharge" as outlined above, should be prioritized by the hospital and State Care Management for aftercare coordination and movement to either alternate inpatient units or alternate care settings.

Hospitals shall actively collaborate with State Care Managers to effect clinically appropriate transfers to other units within the hospital or to receiving facilities to expedite clinically appropriate level of care and aftercare when a patient does not meet Level I clinical eligibility criteria. Enhanced payment and inpatient level of care authorizations are contingent upon actively transitioning identified patients who no longer meet the level of care for Level I inpatient services to other units or an available facility that will accept a patient for admission.

Tracking and Verification:

DMH Utilization Review Care Manager will track all enhanced payment and inpatient authorizations, changes in clinical status, and manage the flow of determinations within the parameters of the clinical utilization review protocol.

Enhanced Payment or Payment Denial and Appeal:

- **Enhanced payment denial will occur when an involuntary inpatient admission is denied an enhanced payment billing authorization at any point in the inpatient admission.**

Payment denial will only occur when a Level I patient is determined to be "awaiting discharge" and transfer to an alternative level of care has been offered and declined by the inpatient facility.
When disagreement occurs between the Department of Mental Health (DMH) and the hospital regarding a decision to deny enhanced payment or payment, a clinical review will be initiated.

Clinical Review:
A clinical review is conducted by representatives from a hospital and DMH who are delegated by the DMH Commissioner to serve this function and review any materials submitted relevant to the decision. Delegated staff may issue a decision or request additional information from persons with knowledge of the issues prior to deciding. The DMH Medical Director will render a determination regarding authorizing or denying the payment. If the DMH Medical Director believes additional consultation is needed to render a determination he/she may informally consult with another

psychiatrist, who has no vested interest in the determination, regarding medical/clinical necessity and the clinical review process or consult with the Department of Vermont Health Access Medical Director prior to making a determination.

In any instance of a denial at this level, the provider may request an appeal to the DMH Commissioner for reconsideration.

*In any instance when payment will be denied, the patient and his or her authorized representative will be notified of his/her right to appeal and the process by which he or she may do so. The hospital may only enter an appeal on behalf of the patient. The patient or his or her authorized representative must authorize this appeal.

Attachment H
Department of Vermont Health Access
Subcontractor Compliance Form

Date: _____

Original Contractor/Grantee Name: _____ Contract/Grant #: _____

Subcontractor Name: _____

Scope of Subcontracted Services:

_____
_____
_____
_____

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

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

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

In accordance with State Standard Contract Provisions (Attachment C), the State may set off any sums which the subcontractor owes the State against any sums due the Vendor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in Attachment C.

_____ _____
Signature of Subcontractor Date

_____ _____
Signature of Vendor Date

_____ _____
Received by DVHA Business Office Date

Required: Contractor cannot subcontract until this form has been returned to DVHA Contracts & Grants Unit.