



State of Vermont
Department of Vermont Health Access, Agency of Human Services &
Agency of Transportation

Vermont Medicaid Non-Emergency Medical Transportation Services

Joint Fiscal Committee Action Required

The Department of Vermont Health Access cannot execute a contract with a vendor to provide Vermont Medicaid Non-Emergency Medical Transportation services until the Joint Fiscal Committee of the Vermont Legislature has reviewed and approved the information contained within this submission.

2020 Legislative Requirements: Section 34 of Act 109 (2020)¹

In fiscal year 2021, prior to executing a contract to provide Vermont Medicaid Non-Emergency Medical Transportation (NEMT) services, the Department of Vermont Health Access shall provide to the Joint Fiscal Committee for review and approval a detailed analysis demonstrating that by executing such a contract:

- (1) No State policy, including the coordinated delivery of transportation services in the Elders and Persons with Disabilities program and the Medicaid Non-Emergency Transportation program, will be compromised;
- (2) There will be no degradation of service to eligible individuals; and
- (3) The financial stability of the State's public transportation systems will be maintained.

The analysis shall also include the impact of the Agency of Transportation's investments in vehicles, technology, and other capital investments on the coordinated service delivery model.

2020 Procurement Process

Through the issuance of a Request for Proposals for an administrator of services for [Vermont Medicaid's Non-Emergency Medical Transportation program](#) and the subsequent review of proposals received, the review committee's resulting recommendation was that the Vermont Public Transportation Association (VPTA) should be awarded the contract for provision of services specific to administering Vermont Medicaid's Non-Emergency Medical Transportation program beginning in 2021. As the current contractor for these services, it is not anticipated that there will be any degradation of services, coordination, or service delivery if the Joint Fiscal Committee approves this vendor selection nor should there be a negative impact on the financial stability of Vermont's public transportation system. More information is provided in Appendix I from the Department of Vermont Health Access (DVHA) within the Agency of Human Services and the Agency of Transportation (VTrans), respectively, specific to each legislative requirement.

The draft contract has also been included for review by the Joint Fiscal Committee prior to its execution (Appendix II).

¹ <https://legislature.vermont.gov/Documents/2020/Docs/ACTS/ACT109/ACT109%20As%20Enacted.pdf>

Appendix I: Department/Agency Responses to Legislative Requirements

Legislative Requirement	DVHA Response	VTrans Response
<p>The execution of any new contract will not negatively compromise any State policy, including the coordinated delivery of services for the Elders and Persons with Disabilities program and NEMT program.</p>	<p>The selected vendor, Vermont Public Transportation Association, currently administers both the Elders and Persons with Disabilities and NEMT programs in Vermont. The draft contract contained within Appendix II requires coordinated delivery of services between Programs.</p>	
<p>Any new contract will not result in degradation of service to eligible individuals.</p>	<p>Current contracted service levels will be maintained and required within the new Agreement; service level agreement penalties are built into the contractual language (please see draft contract in Appendix II).</p>	
<p>Any new contract will not negatively impact the financial stability of the State's public transportation system.</p>		<p>Federally funded vehicles are used to provide some of the demand response services for NEMT, E&D, and ADA programs. The allocation of costs associated with this NEMT contract supports the vehicles, facilities, and capital used to provide transportation services, and the extra capacity allows for a more flexible, responsive, and robust transit program in VT.</p>
<p>What is the impact on VTrans' investments in vehicles, technology, and other capital investments?</p>		<p>The funds derived from the NEMT program are partially allocated to support the facilities, vehicles, and infrastructure necessary for provider quality and consistent mobility services throughout VT. Without the NEMT program, our public transit providers would be faced with a shortfall in the funds necessary to support current operations and facilities.</p>

Appendix II: Draft Contract for Vermont Medicaid NEMT Services

1. **Parties.** This is a contract for services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and the Vermont Public Transportation Association, with a principal place of business in Middlebury, VT (hereafter called "Contractor"). The Contractor's form of business organization is a Domestic Not for Profit Corporation. The Contractor's local address is Vermont Public Transportation Association 160 Benmont Avenue, Bennington, VT 05201. 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 services generally on the subject of providing transportation services to implement and operate a Medicaid non-emergency medical transportation system in the state of Vermont to provide for, arrange and facilitate reimbursement of transportation for eligible Vermont Medicaid beneficiaries who have no other means to get to and from Medicaid billable, non-emergency medical appointments. 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 \$30,599,600.34.
4. **Contract Term.** The period of Contractor's performance shall begin on January 1, 2021 and end on December 31, 2022. This contract may be extended for two (2) additional one (1) 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:

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>	<u>For the Contractor</u>
Name:	Meaghan Kelley	Peter McNichol	Elaine Haytko
Phone #:	802-585-0302	802-879-5935	802-440-0501
E-mail:	Meaghan.Kelley@vermont.gov	Peter.McNichol@vermont.gov	chaytko@vptaride.org
8. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 120 calendar days in advance. The State may terminate this contract following a finding of material breach of its terms following a reasonable cure period as described in Attachment B. Notwithstanding the above provisions, if a governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this contract are provided, is not in compliance with State and Federal law or is operating with deficiencies the State may terminate this contract immediately and notify the Contractor accordingly. Also, in the event that federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract with no obligation to pay the Contractor from State revenues.

9. **Attachments.** This contract consists of 31 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
- Appendix I – Required Forms

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). Other Attachments

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

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

CORY GUSTAFSON, COMMISSIONER DATE
AHS/DVHA
NOB 1 South, 280 State Drive
Waterbury, VT 05671-1010
Phone: 802-241-0239
Email: Cory.Gustafson@vermont.gov

ELAINE HAYTKO, EXECUTIVE DIRECTOR DATE
Vermont Public Transportation Association, Inc.
160 Benmont Avenue, Suite 11
Bennington, VT 05201
Phone: 802-440-0501
Email: ehaytko@vptaride.org

ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

The State enters into this agreement with the Contractor to provide for the arrangement of and reimbursement for Medically Necessary transportation for Vermont Medicaid eligible Members to and from Medicaid billable appointments. Contractor will administer and maintain a statewide system to facilitate access to transportation services through subcontracting with local area transportation Providers for the actual provision of the necessary transport.

Per Federal Rule 42 CFR 440.170(a), “Transportation includes expenses for transportation and other related travel expenses determined to be necessary by the agency to secure medical examinations and treatments for a recipient.”

State currently oversees and monitors Vermont’s Non-Emergency Medical Transportation (NEMT) program, issuing policies and procedures to coincide with changing circumstances and federal and state directives. The State is also responsible for approving various trips and exceptions, including authorizing trips outside of a 100 mile radius from a Member’s home and out-of-state, out-of-area trips. Further information about program specifications, including background check procedures and detail, can be found in the State’s “Medicaid Non-Emergency Medical Transportation (NEMT) Procedure Manual” (NEMT Manual), found online at <https://dvha.vermont.gov/providers/non-emergency-medical-transportation>. Contractor shall follow the terms of the NEMT Manual which are in effect at the time of service. Contractor shall receive 30 days from the date of Contract execution to comply with amendments to the NEMT Manual, dated 1/1/2019, incorporated in the 2021 NEMT Manual. If the NEMT Manual is amended during the term of the Contract, Contractor shall receive 30 days notice prior to the changes taking effect unless the change is due to a change in law which requires immediate implementation. If a change in law requires immediate implementation, Contractor shall not be subject to the discounts set forth in Attachment B, Section F, specific to those changes, for 30 days.

The Contractor currently subcontracts with a network of public transportation Providers (Provider Network) to provide statewide access to transportation services for eligible Members. Contractor shall ensure these Providers screen for eligibility, schedule the least-costly Mode of transportation to medical appointments/services, and submit claims to the State’s Fiscal Agent (FA) for processing.

Contractor shall ensure Providers are subject to service approval, along with claims processing and utilization review. Providers are required to abide by the terms of their personal services contracts with the State, the Provider Enrollment Agreement, and the latest approved version of this NEMT Manual. Providers must also abide by all aspects of the Federal Tax Code.

1. DEFINITIONS:

Capitalized terms used in this Contract not specifically defined in the text shall have the following meanings:

“**Center for Medicare and Medicaid Services (CMS)**”: A division of the federal Department of Health and Human Services, CMS oversees the administration of all Medicaid programs.

“**Complaint**”: A logged report of Member dissatisfaction with, but not limited to, customer service, ride issues, member reimbursement, Medicaid guidelines, or other NEMT-related concerns..

“**Estimated Time of Arrival (ETA)**”: The projected time that the vehicle shall pick up the passenger.

“Health Insurance Portability and Accountability Act of 1996 (HIPAA)”: The federal law that governs the uniform electronic submission of claims and privacy of all insurers, 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.

“Incident”: Individual occurrence or event that is an accident, or violation of rules, guidelines or otherwise a safety concern.

“Fiscal Agent (FA)”: The State’s fiscal agent, responsible for processing claims for NEMT provided under this contract.

“Medicaid”: An assistance program enacted to provide health care services to individuals who are low-income, aged, blind, or disabled and families with children. Started in 1965, it is funded with federal and state monies and administered by each state.

“Medically Necessary”: Health care services, including diagnostic testing, preventive services, and aftercare that are appropriate in terms of type, amount, frequency, level, setting and duration to the Member’s diagnosis or condition. Medically Necessary care must be consistent with generally accepted practice parameters as recognized by health care providers in the same or similar general specialty as typically treat or manage the diagnosis or condition and help restore or maintain the Member’s health, or prevent deterioration or palliate the Member’s condition, or prevent a likely onset of a health problem or detect an incipient problem. Additionally, for those Members eligible for Early and Periodic Screening, Diagnostic and Treatment (EPSDT), medical necessity includes a determination that a service is needed to achieve proper growth and development or prevent the onset or worsening of a health condition. For transportation requests that ask for additional Riders, “Medically Necessary” means that an additional person’s presence is required both during transport and while at the location of treatment. If the presence of this additional person is not required at the place of treatment, then the State cannot pay for additional expenses if requested. All determinations of medical necessity are subject to final review by the State’s Medical Director.

“Member”: A person enrolled in Medicaid and eligible for non-emergency medical transportation services under the Medicaid program managed by the Department of Vermont Health Access.

“Mode”: Modes of transportation include:

- Free fixed-route public transportation
- Fixed and deviated route voucher or fare
- Volunteer driver trip (may have multiple Riders)
- Taxi (may have multiple Riders)
- Demand response public transport vehicle
- Immediate family, other relatives, or friends with vehicles

“No-Show”: Member failure to show for a ride. Examples of instances of “No-Show” include when the vehicle has arrived within the pickup window of the ETA, a valid Trip Cancellation request has not been made, or the Rider has not boarded the vehicle within the specified wait time.

“Non-Emergency Medical Transportation (NEMT)”: A covered service for Members enrolled in Medicaid and Dr. Dynasaur programs. NEMT is a statewide service for providing transports for eligible people to and from necessary, non-emergency medical services.

“Non-Safety Incident”: A logged report of Member dissatisfaction that is not a Complaint or Incident.

“Per Member Per Week (PMPW) Rate”: A pre-negotiated rate at which Provider will be reimbursed for providing transportation services for eligible Members. Weekly payments are based on a formula which considers the number of unduplicated Riders served in a set time period.

“Pick Up and Drop off Point”: The pick-up and drop off point for all rides should be at the Member’s address as defined in the NEMT Manual. Special requests require approval by the Contractor.

“Prior Authorization (PA)”: A process used to ensure the appropriate use of health care services and benefits. The goal of the PA process is to ensure that the proposed request meets all set criteria, and that all appropriate, less-expensive alternatives have been given consideration. All transports must receive PA to qualify for reimbursement. PA/approval for specific programs such as Reach Up, and specific travel such as out-of-state, in-state/out-of-area are referenced in the State’s NEMT Manual. The only exception to the PA requirement is if a Member was granted retroactive Medicaid eligibility and had transportation expenses from the newly covered period that had not previously been paid but met all the criteria for Medicaid transportation eligibility.

“Provider”: Entity that transports a Member to a verifiable, scheduled, Medicaid-billable appointment.

“Registry or Registries”: The Registries of substantiated instances of abuse, neglect or exploitation of a child or vulnerable adult, maintained by AHS as pursuant to law.

“Rider”: Passenger in a Mode of transport.

“Trip Cancellation”: The withdrawal of a trip request by a Member that occurs within the prescribed acceptable period for such action. Twenty-four (24) hour notice of cancellation is generally encouraged.

“Volunteer Driver”: A driver offered through the Provider Network who does not reside in the same physical household as the Member and who provides the vehicle for transport; or a driver provided through the Provider who resides in the same physical household as the Member, is not related to the Member, and provides the vehicle for transport.

2. PROGRAM GOALS

The main goal of this program is to provide efficient, cost-effective, Member-oriented NEMT services to the State’s enrolled, eligible Medicaid population in the most efficient, medically appropriate means necessary. A secondary goal is to work with transportation providers who provide other statewide program rides, including but not limited to Reach Up, the Elderly and Disabled Program, Vocational Rehabilitation, and Department of Corrections. These programs and departments provide rides to activities including but not limited to community services, education, and employment.

Contractor shall coordinate with the other statewide transportation providers to allow for cost effective Modes of transportation when a transportation Provider is already transporting a participant for another activity, but whom might also have a NEMT ride that needs to happen. Statewide coordinated services, in this context, are those that optimize ride sharing between multiple transportation funding sources. This coordination and optimization will also help maintain Vermont’s public transportation system, keeping it financially stable.

3. CONTRACTOR RESPONSIBILITIES

The Contractor shall:

- a. Maintain a network of transportation Modes of enough size and scope to handle the needs of NEMT-

- eligible Members, as well as Riders covered by other AHS programs and providers (Reach Up, Vocational Rehab, Corrections, Elderly and Disabled).
- b. Arrange, either directly or indirectly, only Medically Necessary transportation (excluding ambulance services) for eligible Members who qualify for transportation services and are requesting rides to Medicaid-billable services
 - c. Comply with all federal and State rules applicable to Medicaid providers.
 - d. Ensure compliance with VT Medicaid procedures and provisions set forth in the State's Provider Manual and any subsequent amendments.
 - e. Ensure compliance with all background check procedures and provisions set forth in the NEMT Manual and any subsequent amendments, as long as those manual requirements are consistent with State and federal law. This includes compliance with the Excluded Parties List System (EPLS) maintained by the US General Services administration, and the List of Excluded Individuals/Entities (LEIE) which provides information to the health care industry, patients, and the public regarding individuals and entities currently excluded from participation in Medicare, Medicaid, and all other federal health care programs. All Volunteer Drivers must also go through a background check process, administered by the Contractor.
 - f. Ensure that arrangements are made within each locality Statewide for the provision and reimbursement of NEMT during non-business hours and convey those arrangements to State.
 - g. Check the ongoing eligibility of each Member, distinguishing between and tracking program/funding source whether Medicaid or otherwise. Utilize the Eligibility Verification System (EVS) to verify Member eligibility prior to providing services. Eligibility can be verified either through the State's Fiscal Agent's Voice Response System, or through the online Medicaid portal at www.vtmedicaid.com.
 - h. Bear the expense of services provided that are later denied either because the Member was found to be ineligible for Medicaid on the date of service or because the service provided failed to meet Medicaid transportation criteria. This provision shall not apply if State or its Fiscal Agent is responsible for errors, omissions, or delays.
 - i. Ensure that the field offices provide continuous telephone coverage Monday through Friday between the hours of 7:45 am to 4:30 pm, excluding legal holidays. In addition, provide a voice mail system or robo calling option that beneficiaries may use to cancel scheduled transports after normal business hours.
 - j. Report any Incidents involving a Member to the State within 24 hours of becoming aware of such Incident. This Incident report should include the Member's name, the driver's name, and action(s) involved, and the issue that is being reported.
 - k. Report any Non-Safety Incidents weekly.
 - l. Re-register all subcontractors annually.
 - m. Ensure all subcontractors have proper insurance and have complied with and met all requirements concerning completed background checks.
 - n. Update all subcontractors on proper Medicaid and other program claim code and software protocols.
 - o. Provide technical assistance with and assure compliance to changing software needs.
 - p. Provide training on software, Medicaid and other program regulations, specialized passenger service needs, and privacy/confidentiality compliance.
 - q. Provide management information systems software and data management programs that work with the existing State Fiscal Agent Provider services systems in all situations requiring the need for HIPAA compliant software.
 - r. Provide staff support and management services for software for billing and tracking; also provide troubleshooting assistance when necessary.
 - s. Resolve questions relative to payments and denied claims.
 - t. Maintain working capital account and line of credit to subcontractors awaiting claim payments or in

- an emergency (i.e., equipment failures or systemic failures) to assure uninterrupted service.
- u. Maintain a toll-free number and field high call volumes. In addition, all incoming calls must be recorded. These recordings must be saved for 365 days.
 - v. Verify a Member's eligibility for service prior to ride provision through a screening procedure which also determines the Member's level of need.
 - w. Refer toll free line callers to the appropriate transit service Provider and/or program for covered services whether public transit, carpooling, or social service transportation including Medicaid and/or other AHS programs.
 - x. Approve doctor referrals for trips under 100 miles.
 - y. Establish a system for monitoring out-of-area and out-of-State travel for services and treatments in the most cost-effective, Medically Necessary manner. No out-of-state to a non-participating provider or out-of-area travel for service will be reimbursed unless State staff has reviewed and determined the medical necessity for this service.
 - z. Directly book lodging for Medicaid beneficiaries and approved family members using the most cost-effective, medically appropriate criteria at approved locations using Contractor's credit card; this service ensures that only covered, prior-approved services are provided by having accommodations billed directly to the Contractor.
 - aa. Have a system in place to monitor Member satisfaction, including timely handling of and responding to all calls.
 - bb. Mediate disputes and/or resolve problems between those providing transportation and beneficiaries when special situations or Complaints arise.
 - cc. Work closely with State staff to ensure that objectives and parameters of the Medicaid transportation components are met while complying with the State's Provider Manual and the State's Medicaid NEMT Manual.
 - dd. Exemptions that are Medically Necessary must be reviewed by State staff; any non-medical exemptions are the responsibility of the Contractor.
 - ee. The Contractor must perform and record all background checks per 42CFR 455 on all drivers who provide rides under this agreement and office staff.
 - ff. The Contractor shall be fully responsible for all financial transactions involving their subcontractors, utilizing information provided to them by the State's Fiscal Agent through the weekly remittance advice (RA) process.

4. ADDITION OF NEW PROGRAMS WITH OTHER STATE TRANSPORTATION PROGRAMS

The State may request that the Contractor work with transportation providers who service other statewide programs, including but not limited to, Reach Up, the Elderly and Disabled Program, Vocational Rehabilitation, and Department of Corrections ("Other State Transportation Programs"). Contractor shall coordinate with the Other State Transportation Programs' statewide transportation providers to allow for cost effective Modes of transportation. Contractor shall have the technological capability to distinguish and separate costs across the various programs and funding sources and be able to bill the appropriate entity. The Contractor shall utilize a scheduling software for maximum efficiency.

At the State's request for the Contractor to operationalize a new program, the Parties agree to meet and discuss the scope, timeline, staff and vehicle capacity, training plan, estimate ridership numbers, and determine rider needs. A subsequent agreed to amendment in writing detailing the new program specifications will be required before the program can be operationalized by the Contractor.

5. RECORD KEEPING

Contractor shall ensure that Providers are required to keep records for 7 years. All records must be available at any time for review by Federal or State authorized staff. Providers must provide records for review within 30 days of the request. Contractor must ensure that subcontractors comply with these record keeping requirements as specified

in this section. Contractor shall require subcontractors to grant access of subcontractor's records for review by Federal and State authorized staff.

General Requirements

All trip manifests must include:

- Full date
- Driver's full name
- Driver signature or Contractor shall have an attestation form on file for the responsible driver
- Miles travelled (odometer readings)
- Client's full name
- Pick-up and drop-off locations
- Pick-up and drop-off times (actual)
- The time the driver starts and stops billing

Each trip must be documented (listed) individually on the driver's manifest. Member notices and all Prior Authorizations including supporting documentation must be kept on file.

Taxis & Other Subcontractors

Providers must maintain a list of:

- Taxi companies utilized.
- Taxi company drivers who provide NEMT, including documents attesting to completion of required background checks.
- Subcontracted companies utilized.
- Names of subcontracted drivers who provide NEMT, including documents attesting to completion of required background checks.

In addition:

- All subcontracted or taxi invoices must include the name and signature of the driver or attestation form on file for the responsible driver.
- All subcontracted van manifests must meet the specifications listed in General Requirements.

Waiver of Liability

- A signed Waiver of Liability must be on file before Hardship Mileage reimbursement can be paid.

Background Checks

- The Contractor shall perform all mandated background checks on all required employees and volunteers as outlined in the State's NEMT Manual, as long as those manual requirements are consistent with State and federal law. The Contractor must also supply monthly summaries of the background check process, including the number of persons checked who passed and who failed. The implications and resolutions of those failed checks must also be outlined in those monthly reports.

6. RATE SPECIFICATIONS

The State will pay the Contractor on a Per Member, Per Week (PMPW) basis to deliver transportation services to eligible Members. Contractor will be paid in accordance with Attachment B of this Contract with the State.

For claims that exceed the payment threshold of \$1,000, each Provider will be required to submit a payment exception request to the State. These claims should not be submitted directly to the State's Fiscal Agent, as they will either automatically deny or pay zero. Each request should include the CMS1500 form, the attached expense report, an approved copy of the physician referral form, and the associated receipts. The State will

review the request and forward to State management for payment approval. The request will then be sent to the State’s Fiscal Agent for processing. State’s Fiscal Agent will contact the Provider and attempt to resolve any incomplete documentation issues if needed. These claims will need to be submitted to the State for review within 45 days of the return home of the member.

If the Contractor fails to meet the Performance Standards set forth in Section 6 below, the Contractor may forfeit payment as set forth in Attachment B. However, before any suspension or forfeiture of funds takes place, the State shall give written notice to the Contractor of the nature of such breach and provide Contractor with a 30-day opportunity to cure such breach. If a breach cannot be reasonably cured within such 30-day period, at the State’s discretion, the Contractor may be given a longer period to correct the breach provided the Contractor diligently pursues such cure. The State may provide technical assistance to Contractor with respect to the correction of any such claimed breach of this Contract.

7. PERFORMANCE STANDARDS

The Contractor shall abide by the following performance standards. Failure to meet any of the performance standards listed below may result in financial penalties as described in Attachment B. Whenever such a failure results in a significant negative impact on a Member, Contractor must notify the State immediately.

Standard	Measure/Target	Reporting Requirements
Provide transportation (in accordance with the NEMT Manual) whenever a trip request is received with at least two business days’ advance notice to the Contractor	95% of the time	Contractor will report all cases where standard is not met. This should be included in Provider’s monthly report.
Contractor will provide professional and courteous customer service to all Members.	95% of the time	Contractor will report all Complaints and resolutions in the monthly report.
Calls answered Monday to Friday between 7:45 AM and 4:30 PM will be answered by a live person within 3 minutes.	95% of the time	Contractor will report all cases where a Member was on hold for more than 3 minutes. Include in monthly report.
Call abandonment rate shall be minimal. A call will be considered “abandoned” when a Member hangs up before speaking with a live operator.	<5% of all calls are abandoned	Contractor will report all cases where a call was abandoned. Include in monthly report.
Members will arrive on time for their appointments.	95% of the time	Contractor will report all cases where a Member arrived late for an appointment. This report shall document any extraordinary conditions (weather, etc.). Include in monthly report.
Contractor will pick up Member within the timeline of the “On Time Pick Up Window” as defined in the NEMT Manual. This also applies to return trips.	95% of the time	Contractor will report all exceptions as a part of their monthly report.
All provisions of the NEMT Manual and contract shall be met.	98% of the time	Contractor will report all exceptions as a part of their monthly report.
All Complaints shall be logged, with resolution stated. All corresponding documentation shall be kept on file per record keeping instructions per NEMT Manual.	100% of the time	Contractor will report 100% of all complaints received. Exceptions may be allowed by State for good cause shown. Contractor shall supply a summary of Complaints and resolutions to the State monthly.

8. REPORTING REQUIREMENTS

This Contract shall require the provision of quarterly financial reports including unaudited balance sheet and profit and loss statements with a brief narrative on performance for the quarter; reports must be submitted to State within 30 days following the end of a quarter.

The Contractor shall submit to the State a monthly accounting of actual rides provided and background check reports by the end of the following month. This report will be broken down by Mode, Member, and destination; the report shall calculate by month, quarter, and annually based on weekly reporting. The Contractor shall provide a monthly summary of background check results conducted during the reporting period. The Contractor shall also ensure adherence to all requirements regarding screening and background checks as set forth in the NEMT Manual, as long as those manual requirements are consistent with state and federal law.

Contractor shall compile balance sheets and profit and loss statements 90 days after the quarter ends.

The Contractor is required to submit weekly progress reports to the State staff via an email distribution list. The State will provide the Contractor with the names, titles and email addresses that comprise the list.

Within 30 days following the end of the month, Contractor shall submit to State Contract Administrator quarterly and a year-end spreadsheet in Excel format with the following information pertaining to the Medicaid program. Information to include the number and Mode and cost of the trips for the following categories:

- All Selected Trips (i.e. Scheduled-Taken)
- All Member Rescheduled
- All Selected Vendors Rescheduled
- All Members Canceled in Advance
- All No-Show – Members
- All No-Show – Drivers
- All Selected Trips Scheduled within the last 48 hours (i.e. Last-Minute Trip Requests)

9. CONTRACT ADMINISTRATION

This Contract shall be administered for the State by the Department of Vermont Health Access (DVHA). The DVHA Commissioner and the Contract Administrator will be responsible for all matters related to this Contract. The Contract Administrator shall be the Contractor's primary liaison in working with other State staff and with any other contractor. In no instance shall the Contractor refer any matter to any other official in Vermont unless initial contact, both verbal and in writing, regarding the matter has been presented to the DVHA Commissioner or the Contract Administrator.

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

10. NOTICES TO PARTIES UNDER THIS AGREEMENT

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

	STATE REPRESENTATIVE	CONTRACTOR/GRANTEE
Name	Office of General Counsel DVHA	Elaine Haytko, Executive Director VPTA

Address	NOB 1 South, 280 State Drive Waterbury, VT 05671-1010	160 Benmont Avenue, Suite 11 Bennington, VT 05201
Email	ahs.dvhalegal@vermont.gov	

The parties agree that notices may be sent by electronic mail except for the following notices which must be sent by United States Postal Service certified mail: termination of contract, contract actions, damage claims, breach of contract notifications, and alteration of this paragraph.

STATE MONITORING OF CONTRACT

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

11. 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 (Appendix I – Required Forms) in order to seek approval from the State prior to signing an agreement with a third party. Upon receipt of the Subcontractor Compliance Form, the State shall review and respond within five (5) business days. A fillable PDF version of this Subcontractor Compliance Form is available upon request from the DVHA Business Office. Under no circumstance shall the Contractor enter into a subcontract 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 Subrecipient change, the Contractor is responsible for updating the State within fourteen (14) days of said change.

ATTACHMENT B PAYMENT PROVISIONS

The maximum dollar amount payable under this contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - A. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - B. a current IRS Form W-9 (signed within the last six months).
2. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are as follows:

A. CONTRACT VALUE/QUANTITY

Contract issuance is contingent upon funding availability. The maximum dollar amount payable under this contract is not intended to guarantee any amount of payment. The Contractor will be paid at the billable rates for services performed, up to the maximum allowable amount. For Calendar Year 2021, the Contractor shall be paid at a rate of \$34.57 PMPW. For Calendar Year 2022, the Contractor shall be paid at a rate of \$34.75.

If the State initiates the Addition of New Programs with the Other Transportation Programs identified in Section 4, the Contractor shall bill at the current PMPW rate for the first six months of the new program.

The following provisions specifying payments are:

- No benefits or insurance will be reimbursed by the State as set forth in Attachment C.
- Payments for the period of January 1, 2021 to December 31, 2021 shall not exceed \$15,148,317.00
- Payments for the period of January 1, 2022 to December 31, 2022 shall not exceed \$15,451,283.34

B. INVOICES

The State will pay the Contractor on a Per Member, Per Month (PMPM) basis. In addition to the PMPM payment, the Contractor will be allowed to bill Medicaid per procedure below for any complete trip that costs more than \$1,000 (round trip, including lodging and other expenses). These particular trips will be submitted to the State directly for review and eventual manual submission with an administrative override. All claims and invoices should be submitted within 45 days of date of service in order to comply with the set PMPM payment methodology.

C. MODIFICATION

The State developed this PMPM payment model in order to provide an incentive to the Contractor for efficient and cost-effective performance. The PMPM dollar amount was developed by analyzing utilization and performance data from previous years. Because these prior-year conditions may change, the State agrees to negotiate in good faith to modify this contract whenever:

The Contractor can demonstrate that a change in utilization or other conditions will have a financial impact of more than \$10,000 AND one of the following statements is also true.

1. The Contractor experiences a change in the number and/or cost of rides delivered per Member, per month.
2. Fuel prices change by more than 15%. Fuel prices will be based on U.S. Energy Information Administration data for New England (Area PADD 1A). A fuel price baseline (for both all grade average and on-highway diesel) will be set at the onset of this contract term.
3. The State initiates a New Program under Section 4. The Parties shall review the trip data and costs after six months of service and determine if the PMPW needs to be adjusted lower or higher, as supported by documentation.
4. There is any other change in costs that are clearly out of the direct control of the Contractor.

To initiate a request for contract modification under this section Contractor shall submit supporting documentation to State necessary to demonstrate changes in utilization or other conditions that would trigger modification under this section, a written description of the problem, including all appropriate citations and references from the Contract, and a clear statement of a proposed course of action to resolve the dispute. State shall review all documentation submitted and notify Contractor within 10 business days of the need for any reasonable additional information, which Contractor shall provide.

Under no circumstances will the State negotiate a higher PMPM due to deficiencies in the Contractor's performance.

D. MODIFICATION DISPUTE RESOLUTION

The Parties agree that to resolve disputes regarding Attachment B, Section C: Modification using the following dispute resolution process prior to pursuing a remedy from a third party:

- a. The issue in dispute will be referred to the State Program Manager, and the individual referred to in Section 7 on page 1 of this Contract for Contractor, or their respective designees. Each representative shall consult with the managerial or directorial staff who are routinely tasked with oversight of work concerning the subject matter of the issue in dispute. The Parties shall gather the information they need to evaluate the issue in dispute, meet and confer, and will have ten (10) business days from the date their meeting to resolve the dispute. The parties shall consider and discuss retroactivity and may make the decision retroactive where reasonable and appropriate and allowed under state and federal law.
- b. If the individuals referred to in the preceding paragraph have not resolved the issue in dispute within ten (10) business days, the issue will be referred to the Commissioner of DVHA, or his or her designee, and to the Chief Executive Officer of Contractor, or his or her designee. The Parties shall gather the information they need to evaluate the issue in dispute, meet and confer, and will have twenty (20) business days from the date the individuals under this section meet to resolve the dispute.
- c. If the issue is not resolved by the management in subsection (b), the dispute shall be referred within twenty (20) business days to a mediator that Parties mutually agreed upon. Parties shall try in good faith to settle the dispute by mediation. Contractor shall bear all costs related to mediation.

E. CLAIM SUBMITTAL

In order to help the State track utilization, the Contractor will submit claims to Medicaid for all direct transportation services provided to members. These claims will be “paid” by the State’s claims adjudication system with a zero-dollar amount. The data submitted in these claims will be used to generate the weekly payment described below.

In order to make timely payments to the Contractor, the State will make the PMPM payments in weekly installments. These weekly payments will be based on a Per Member, Per Week (PMPW) basis. The following formula will be used to convert the PMPM to a PMPW for the purpose of making weekly payments to the Contractor: $(PMPM \times 12) / 52$

The weekly payments will be calculated using the following method:

- Each week, the State’s FA will generate a report of the total number of unduplicated individuals served by the Contractor over the prior 395 days. As soon as practicable, State’s FA will begin generating the report using 365 days.
- Using system edits, State’s FA will remove from that total number the individuals who have either lost their insurance or have passed away during that time period.
- State’s FA will multiply the number of unique recipients by the PMPW dollar amount and make the payment during the following week’s electronic payment to the Contractor’s bank account.
- State’s FA will send weekly Remittance Advice documents to the Contractor.
- If the weekly payment cannot happen due to data or processing errors, the State’s FA will send the payment in the following week. The State agrees that these payments will be made on a weekly basis, but it will not be considered a breach of this contract if the State’s FA is forced to postpone a payment for one week due to a data or processing error.

The State will not pay any costs which are not specifically outlined in this contract or the State NEMT Manual.

F. PERFORMANCE STANDARDS

Contractor agrees to the following discounts in any instance where minimum standards are not met:

- Reporting: The Contractor must meet and document all of the minimum standards for financial and informational reports as defined in Attachment A, Section 6 and 7. In the event the Contractor fails to meet the foregoing performance standards, the Contractor shall award the State a discount for providing service levels which are not consistent with the Contractor’s obligations as set forth herein and may be assessed at one percent (1%) withhold from the weekly PMPW payment for each standard that is not met.
- Service: In the event the Contractor fails to meet minimum service performance standards as defined in Attachment A, Section 6 and 7 the Contractor shall award the State a discount for providing service levels which are not consistent with the Contractor’s obligations as set forth herein and may be assessed at one percent (1%) withhold from the weekly PMPW payment for each standard that is not met.
- In addition to the discounts described above, the State may take action in response to a breach in the material terms of this contract following a reasonable cure period as described in the paragraph below, including temporary withholding one percent (1%) withhold from the weekly PMPW payment or cancellation of this agreement. A material breach that includes the Contractor’s failure to report or cooperate with the State in response to a situation resulting in or

likely to result in a significant and unreasonable negative impact on a Member or on the program is not subject to Cure.

- Cure: In the event the Contractor fails to meet reporting and/or service performance standards as referenced above, the State will send written notification and designate a period of time, not to be less than ten (10) business days, in which the Contractor must provide a written response to the notification. Such response may include a corrective action plan which, among other things, will propose a cure period. The State shall review the response and either reject or accept the corrective action plan. If rejected, Contractor will propose a modified corrective action plan based on feedback from the State. Once the corrective action plan has been accepted by the State, Contractor will be afforded a reasonable cure implementation period, not less than twenty (20) business days, during which time the Contractor may remedy the issue and return to compliance. Should the Contractor fail to remedy the issue, the State may notify the Contractor of its intent to assess the payment discount and the amount and date of the payment discount. All payment discounts will be deducted from the Contractor's payments as outlined above.

**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: VERMONT PUBLIC TRANSPORTATION ASSOCIATION

SOV CONTRACT NO. _____ CONTRACT EFFECTIVE DATE: JANUARY 1, 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 of 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, through 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 through (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.

**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.