

Request for Proposals:

Siting and Design of Psychiatric Secure Residential Recovery Program(s)

Issue Date: December 13th, 2016 (*Revised on January 19th, 2017*)

Due Date and Time: April 14th, 2017 at 4:30 PM

The Vermont Agency of Human Services, Department of Mental Health, seeks proposals from interested parties for the development and operation of staff-secure¹ and facility-secure (locked) residential recovery (SRR) programming that would replace the temporary SRR psychiatric facility owned and operated by the State of Vermont in Middlesex, Vermont and may serve additional populations in need of a therapeutic, secure residential treatment settings.

I. Background

In the wake of Tropical Storm Irene and the closing of the Vermont State Hospital in 2011, the Vermont Legislature, through Act 79², authorized the Commissioner of the Department of Mental Health (DMH) to establish and oversee a secure seven-bed residential facility owned and operated by the state for individuals no longer requiring acute inpatient care, but who remain in need of treatment within a secure setting for an extended period of time. In June of 2013 DMH successfully opened a seven-bed SRR in a temporary location in Middlesex with plans to assess the capacity needed for a permanent SRR replacement over the following two years.

The development and purpose of the SRR was originally conceptualized as part of the Vermont Futures Project, which sought to design and develop an array of investments in the essential community capacities and reconfigure the Vermont State Hospital into a new system of inpatient, rehabilitation, and residential services for adults. As part of this new system, the SRR was designed to serve individuals who would otherwise remain hospitalized due to a high risk of self-harm or neglect, or pose a danger to others.

The temporary locked SRR program in Middlesex currently serves individuals who do not require inpatient acute psychiatric services, but their care needs exceed local community resources. Some of these individuals are suicidal with a high risk of self-harm. Other individuals manifest a high incidence of aggressive behaviors and are dangerous to others but are not in an *acute psychotic crisis*. Another smaller group includes those who are no longer clinically severely symptomatic, but must remain in a secure environment for prolonged periods of time awaiting resolution of a judicial process. Given the facility's licensing as a Therapeutic Community Residence (TCR) and space limitations, the program does not serve individuals who require emergency involuntary procedures (i.e. seclusion and restraint).

¹ A staff secure facility may be defined as a residential facility in which the movements and activities of individual residents may, for treatment purposes, be subject to oversight through the use of intensive staff supervision. This may include design features to keep staff informed of resident movement in and out of the facility, such as silent alarms.

² <http://www.leg.state.vt.us/docs/2012/acts/act079.pdf>

In January 2015, a report was submitted to the House Corrections and Institutions Committee based upon requirements of Act 178³ that “*the Commissioner of Buildings and General Services, in consultation with the Commissioners of Mental Health and Corrections, shall develop a proposal to establish a permanent secure residential facility no later than January 15, 2015.*” The report submitted (Appendix I) put forward a potential multi-year planning process and possible maximum capacity that such a facility might provide to the current system of care. The report development drew upon earlier secure residential size and costing models to project a potential cost for a permanent secure residential facility for further consideration. The report recommended the creation of a 14-bed, involuntary, secure (locked) residential facility located within the state of Vermont on lands to be acquired for construction or renovation. As proposed, the program would require a waiver of current TCR standards to include the potential need for and use of brief involuntary interventions with residents served. Residents of the facility would include those people who remain in acute care settings due to a high risk of self-harm, or neglect, or pose a danger to themselves or others. They would be individuals who do not require inpatient acute psychiatric services, but whose care needs exceed local community program resources. The cost to develop the program, excluding land acquisition costs, was estimated to be approximately \$12 million, with a projected annual operating cost of \$5.1 million using Global Commitment funding with some private pay.

Based on that report and subsequent discussions between the Agency of Human Services (AHS) and the Vermont Legislature regarding other high-need populations being served by other AHS departments (e.g. Department of Corrections and the Department of Disability, Aging and Independent Living) that may require secure residential treatment, the legislature subsequently directed the Secretary of AHS to “conduct an examination of the needs of the Agency of Human Services for siting and designing a secure residential facility. The examination shall analyze the operating costs for the facility, including the staffing, size of the facility, the quality of care supported by the structure, and the broadest options available for the management and ownership of the facility” (Act 26⁴). As part of that examination, AHS was asked to assess how the development of an SRR Facility may address or overlap with the needs of individuals who are currently being served by other departments but have similar needs for secure residential treatment.

The report also recommended further analysis of development and operational costs within the context of potential public-private partnership agreements. As a follow-up to an initial analysis of potential programming based on the results of a *Request for Information* (see Appendix II), AHS is now issuing a Request for Proposals for the development and operation of permanent Staff-Secure and Facility Secure residential programs that allow for and support further exploration of public-private partnership efficiencies and more detailed cost projections in order to determine overall cost benefits for both quality and service delivery to the population to be served. As an example, collaborative program proposals from service provider organizations and property development organizations are encouraged.

AHS plans to have the State Fiscal Year ‘18 budget include requests for identified resources that will be necessary to initiate Certificates of Need or Certificates of Approval requirements and project development and management coordination necessary to oversee the establishment of a permanent replacement programs for the current secure residential program. Awarding of any contract associated with this RFP will be dependent on future allocation of funding in the state budget passed by the Vermont Legislature.

³ <http://legislature.vermont.gov/assets/Documents/2014/Docs/ACTS/ACT178/ACT178%20As%20Enacted.pdf>

⁴ <http://legislature.vermont.gov/assets/Documents/2016/Docs/ACTS/ACT026/ACT026%20As%20Enacted.pdf>

Based on a thorough analysis of the potential populations to be served, compatibility of programming potentials, siting potentials, and funding mechanisms to be considered given recent renewal of Vermont's Global Commitment to Health Waiver, AHS is now exploring the development of multiple programs as replacement options for the SRR. Proposed programs would be expected to be "No Refusal" for admission of eligible individuals and operate in full collaboration with the Department of Mental Health. Proposed programs will be limited to residents who have mental illness and treatment needs for this setting and, if staff secure, voluntary, and have a maximum of no more than 16 beds, would likely be eligible for Federal Financial Participation (FFP). Proposed programs may choose to clinically manage voluntary specialty populations through further division into care clusters or units of a program as well. Additionally, proposed programs may operate as a locked facility (facility-secure) and serve an involuntary population that would continue to benefit from a sub-acute rehabilitation environment until clinically or legally discharged to a voluntary program. This type of program would not be eligible for FFP and could be more than 16 beds. DMH discourages this type of facility-secure program from blending voluntary and involuntary populations as such a combination may result in the entire program being ineligible for FFP during the period of involuntary sub-acute treatment in the community.

Staff Secure Residential:

This type of program model targets individuals who would be under the care and custody of the DMH Commissioner and treatment programming would maximize opportunities for traditional Medicaid participation and minimize Global Commitment MCO Investment⁵ funding. This program model is comparable to existing Staff Secure Intensive Residential Recovery programs (e.g. Second Spring) operating currently within Vermont. The proposed program would draw from eligible individuals such as:

- individuals in inpatient care with complex treatment needs ready for transition from a hospital who are willing to reside in the program as part of their course of recovery prior to return the community;
- eligible individuals ready for release without conditions from the Department of Corrections as part of their reintegration into the community;
- eligible individuals who may be clinically decompensating in the community and are willing to engage voluntarily in residential support services for stabilization and return to the community;
- eligible individuals who may require assisted living or enhanced residential care and support services who have been unable to access the necessary levels of transitional supports to retain independence in the community;
- eligible individuals amenable to voluntary community-based traumatic brain injury supports and services transitionally, pending development of individualized programming by the Department of Disabilities, Aging, and Independent Living.

Facility Secure Residential:

This program model targets eligible individuals who would be under the care and custody of either the DMH Commissioner or Department of Corrections Commissioner and would forego FFP given

⁵ Vermont's current "Global Commitment" Medicaid waiver provides the state with expenditure authority to invest in health-related services and activities, and draw federal receipts, for costs that would not otherwise be Medicaid matchable. These initiatives are known as "MCO (Managed Care Organization) Investments."

population clinical complexity and/or legal limitations imposed in order to serve a sub-acute population that continues to afford secure treatment alternatives and safeguards in the community. The program can be expected to utilize episodic emergency involuntary interventions when clinically indicated for safety of the individual or other residents. The program can also be expected to serve as a designated facility for court-ordered medication in the community if so authorized by the court. The proposed program will draw from eligible individuals such as:

- individuals in inpatient care with complex treatment needs ready for transition from a hospital who are unwilling to reside in the program, but determined either clinically or by the court to require 24/7 supervised, sub-acute treatment prior to a less-restrictive residential option in the community;
- convicted offenders with a serious mental illness who do not meet criteria for involuntary hospitalizations but require a more therapeutic setting than is available through existing Department of Corrections (DOC) health services.
- eligible individuals ready for release from the Department of Corrections with appropriate 24/7 supervised residential supports and active limitations imposed, based upon documented history and/or risk assessment, in conditions of release prior to reintegration into the community;
- eligible individuals who are clinically decompensating in the community, not engaging with voluntary community services, not yet meeting inpatient admission criteria, subject to revocation of orders of non-hospitalization when medication is identified as a necessary treatment component for ongoing stability, and known to require re-hospitalization and reinstatement of medication when cessation of medication occurs before returning to the community;
- eligible individuals who may require assisted living or enhanced residential care and support services who have been both unable and unwilling to access the necessary levels of supports to retain independence in the community;
- eligible individuals who are unable and/or unwilling to voluntarily engage in voluntary community-based traumatic brain injury supports and services transitionally, pending development of individualized programming by the Department of Disabilities, Aging, and Independent Living.

II. Request for Proposals

This Request for Proposals seeks agencies with demonstrated experience in the provision of mental health treatment to create and operate staff-secure or facility-secure (locked) residential recovery programs to replace the temporary facility owned and operated by the State of Vermont in Middlesex, Vermont and serve additional populations in need of a therapeutic, secure residential treatment setting. The new program service capacity may be developed through new construction or through program modifications of existing community-based program capacity intended to meet the target population needs. The new service capacity may also target construction and/or services to specific cohorts of the target populations in one or more programs in order to most appropriately address the environment of care and programmatic/oversight management needs for the sub-groups. Depending on model, program capacity to effectively address episodic behavioral dysregulation and emergency involuntary procedures emergently for individual and other resident safety must be addressed. Proposed program staffing must also identify both clinical personnel, security personnel, and physical environment of care for program and/or facilities. Training components for all personnel must be trauma-informed and fully trained in de-escalation and emergency response under direction of clinical personnel. Proposed programming must identify how the capacity of different

populations will be configured and address the needs of the target populations served through the proposed model and service components. A description of the residential recovery programming needs is as follows.

Target Populations

DMH has proposed that residents of the new SRR program(s) include those people who remain in acute care settings due to a high risk of self-harm, neglect, or pose a danger to others. They would be individuals who do not require inpatient acute psychiatric services, but whose care needs exceed local community program resources. Some of these individuals are suicidal with a high risk of self-harm. Other individuals manifest a high incidence of aggressive behaviors and are dangerous to others. Another, smaller group would include those who are no longer clinically severely symptomatic, thus no longer requiring acute care, but who must remain in a secure environment for prolonged periods of time awaiting resolution of criminal proceedings. Specific examples of the kind of behavior the program(s) would potentially treat include:

- People with severe symptoms of mental illness such as delusions of persecution which only partially respond to acute hospital-based treatment and are prone to act on those delusions by assaulting others;
- Individuals with mental illness whose mental status fluctuates with episodes of severe symptoms such as hallucinations in which assaultive behavior or self-destructive urges are prominent, yet have prolonged periods of stability between these episodes;
- Individuals with a primary mental illness and cognitive impairments, who have a high frequency of assaultive behaviors.

It should be noted that history of violent behavior in and of itself would not be a sufficient criterion for admission or denial of admission in either program model. Persons in acute psychotic crises (who might be assaultive) would not be appropriate for community-based program services and instead admitted directly to an acute psychiatric inpatient unit of a hospital. However, individuals who continue to demonstrate dangerous behavior as a result of mental illness but are not in a psychiatric crisis and do not require the medical services of an inpatient care unit, would be eligible for facility secure program model services.

New staff secure or facility secure programming would also be used to treat a subset of individuals who have been or remain involved in the correctional system and meet all of the following criteria:

- Impaired due to a mental illness to the point that they lack the ability to meet the ordinary demands of life,
- Substantially impaired when it comes to functioning in a correctional environment,
- Eligible to be released from the Department Corrections (DOC) custody, and
- Meet the legal criteria to be placed on an order of non-hospitalization.

Accordingly, there may be instances wherein, at the discretion of the Commissioners of the Departments of Mental Health and Corrections, placement of individuals may serve important rehabilitative, therapeutic and re-integration objectives in either program model.

DOC reports that the most prevalent types of disorders among inmates that might be referred to residential programming are as follows:

- 1) Schizophrenia Spectrum and other Psychotic Disorders: Individuals suffering from these disorders experience distressing symptoms in at least one of the following domains: delusions, hallucinations, disorganized thinking (speech), disorganized or abnormal motor behavior (including catatonia) and negative symptoms (e.g. diminished emotional expressions and avolition).
- 2) Bipolar Disorders: Individuals suffering from these disorders experience periods of mania characterized by elevated, expansive or irritable mood with increased activity. The individual may describe that they feel “on top of the world” and may exhibit inflated self- esteem, decreased need for sleep, rapid and pressured speech, racing thoughts, distractibility and excessive goal directed thinking.

Program Characteristics

As with the current, temporary SRR in Middlesex, the focus of care of either permanent program models would continue to be the provision of psychiatric rehabilitation services and psychosocial treatment delivered in a positive behavioral support framework to assist individuals to engage in their own recovery and develop the necessary skills to move to less intensive services, and, ultimately, independent living. Program interventions would focus on connecting with the resident using positive behavioral supports designed to facilitate the individual’s growth in skills needed for a return to the community. The focus of programming would include:

- Behavioral analysis and development of individualized treatment plans;
- Treatment of underlying mental illness;
- Life skills development;
- Psych-social and psycho-educational programming focused on learning how to be safe and responsible citizens;
- Supporting and motivating residents (and their home communities) to engage in a recovery process;
- Discharge planning.

Program characteristics would also include the capacity to maintain a safe, secure environment regardless of the level of risk. The environment of care would permit separation of sub-groups so that all are safe and individuals with a history of traumatic experiences and victimization by others would not be further traumatized by contact with individuals prone to aggressive, assaultive behavior. Staff would be trained and credentialed to work with this population group. As discussed previously, the proposed population to be served in either program model must be prepared to manage individuals who are at risk for exhibiting brief episodes of assaultive or self-injurious behavior or frequently behaviorally dysregulated depending on residential treatment model proposed.

The program(s) must provide supervision on a 24-hour, seven day a week basis by qualified mental health staff. Protocols with public safety officials will be required to insure a rapid, law enforcement response to any resident who may initiate an unauthorized absence from the residence or work site. Initially residents will be supervised at all times, but over time, it is expected that individuals in a staff

secure program will progress to reduced levels of supervision and increased levels of community re-entry based on a developing track record of safe and responsible behavior. Program will use existing community resources, within limited identified for either program model, to assist with vocational and support services.

Other Considerations

The programs would serve as a state-wide, “no refusal” program, rather than catchment area resource and would be expected to operate in collaboration with inpatient treatment and ongoing community care. The staff secure or facility secure program will join a network of participating care partners (inpatient, crisis diversion, ongoing community treatment) in which common clinical protocols and criteria for admission and discharge are adhered to. Furthermore, this program(s) will be expected to manage its census by collaboratively arranging for ongoing care of residents ready for discharge such that clinically eligible new admissions can be accommodated.

III. Instructions for Program Proposals

Please provide the information outlined below. At a minimum, the following topics must be covered as outlined. Be aware that you are not limited in responding to the following topics, but are free to expand your program narrative to explain as fully as possible the scope of your proposed program.

For your program proposal, the following five sections must be submitted:

1. Technical Proposal – 65 points

This section describes the program(s) as you propose to implement it. Describe the elements as well as how they fit together to present a cohesive program. At a minimum address the following:

- A. Type of residential program model and management structure proposed with rationales - Identify the overarching program philosophy and describe how this philosophy will be operationalized in the clinical and program policies. Describe the management structure of the program and if the program will be public, private, or other organizational partnership/collaboration.
- B. Population Mix – Identify what population/s will be served by the facility and describe facility and program considerations necessary to meet any specialty care population needs envision in the program model.
- C. Staffing Pattern - Describe the positions with job descriptions and qualifications, the supervisory and management structure. Explain how this pattern achieves clinical and rehabilitation goals for residents, and ensures appropriate support and supervision of clients. Address how qualified peers (individuals who have experiences similar to those individuals being served at the program(s)) will be included in the staffing pattern. If providing facility secure services, identify the parameters for a security workforce augmenting clinical care service delivery.

- D. Facility and Siting Considerations – Describe how the facility construction and siting will be determined in order to manage the population to be served by the proposed model. Describe readiness of proposal with regard to community engagement, existing facility structure/redesign as applicable or construction, permitting and zoning as indicated. Facility Secure proposals should identify provisions that assure that the population identified will be effectively managed and supervised within the limitations imposed either clinically or legally for the population.
- E. Financing Model – Describe how the facility anticipates assuring financial sustainability for the population to be served by identifying projected payment streams and rationales.
- F. Referral/Admissions and Discharge Processes – Please describe the referral and admissions process for your program including how care will be prioritized when demand exceeds capacity. Such prioritization will include individuals in acute care inpatient programs, those referred by participating network partners, and individuals referred by the Department of Mental Health. To the best of your ability, describe the discharge criteria and process; including integration with ongoing care and community partners.
- G. Assessment and Treatment Planning Process - Describe the assessment and treatment planning process, how this will result in treatment plans individualized for each client and how these will be implemented by program staff. This process must consider use of evidence based practices and reflect residents' personal goals and preferences. In addition, the assessment and treatment planning process must identify and address co-occurring conditions such as trauma, substance abuse, and cognitive impairments. Discuss how engagement, motivational enhancement, and contingency strategies will be employed to gain residents full and willing participation in treatment.
- H. Client Progress - Describe how client progress will be evaluated - Describe the process to redesign treatment and rehabilitation interventions based on assessment of progress. Describe the process for clinical case consultation and peer review.
- I. Performance Evaluation - Describe how the program will evaluate its performance and quality.
- J. Other Interventions - Describe emergency response capability and provisions for additional medical services as needed.
- K. Public Safety - Describe expected protocols with public safety officials.
- L. Patient's rights - Include a copy of your agency's policies and procedures regarding patient's rights. Include policies and procedures regarding grievances and complaints.
- M. Other - Include any other information you believe will present a comprehensive picture of your proposed program.

2. Agency/Partnership Qualifications – 35 points

In this section describe the experience of your organization/s with psychiatric treatment and rehabilitation and the proposed target populations to be served, including individuals with severe and persistent mental illness and other co-occurring conditions.

- A. Include organizational mission statement and how rehabilitation, recovery, and community integration is supported by the statement.
- B. Provide a description of the organization's contracting and programming experience within the past five years.
- C. Specify outcomes achieved by services including any supporting data.
- D. Describe the organization's current licenses, accreditations, and approvals.
- E. Describe current or past experience providing psychiatric rehabilitation and residential services. Please provide information regarding program sites and number and type of clients served.
- F. Describe the organization's current experience in working with community service partners to create aftercare arrangements.
- G. Provide information regarding any instance in which the applicant/s has ever been suspended or excluded from any Federal or State government program for any reason.

3. Organizational Capacity – 35 points

In this section describe your organization's capacity to perform the requested work and how it fits into your overall organizational structure.

- A. Provide a description of the structure of the organization accountable for the proposed program. Indicate how this program will fit into the organization's structure.
- B. Describe how your organization will address community relations and outreach regarding this program.
- C. Describe your organization's governance model and how key stakeholders, including peers and family members will assist in the development, review, and ongoing assessment of this program.
- D. Describe the organization's staff retention rate over the last three years and strategies that will be used to recruit and retain staff from local communities. If the program is to be located in a low-population area, include information on how this may be a barrier to staff recruitment and how this barrier will be overcome.
- E. Identify the CEO and members of the Board/s of Directors and provide their towns of residence.

- F. Submit the most recently completed audited financial statement of your organization/s and identify funds that could be allocated to start the proposed program.
- G. Describe any other characteristics related to the organization's ability to effectively develop and administer this program.

4. Program Costs – 20 points

Describe the organization's proposed cost and rate for this program by submitting the following:

- A. Provide a detailed budget and narrative describing proposed expenditures regarding costs and financing related to program development and start-up.
- B. Provide a detailed budget and narrative describing a proposed annual operating budget. The budget should include costs for the following categories:
 - Staffing by discipline and/or role;
 - Total salary-related expenses (benefits, payroll taxes, etc.);
 - Contracted Services (legal, consulting, etc.);
 - Operating expenses by major category (supplies, services, equipment, utilities);
 - Facility expenses (rent or depreciation).

Include any other categories to provide a full understanding of the basis for the cost of creating and operating the program(s).

5. Implementation Plan and Timeframe – 15 points

In this section please describe the organization's approach to program development and implementation.

- A. Propose a start-up time frame and describe the program development activities required (including Certification of Need/Certificate of Approval process, local zoning considerations, licensing, etc.).
- B. Describe the proposed physical location of the program(s) and why this location(s) is appropriate for the services proposed.
- C. Describe preparation of policies and procedures for program operations. Also, describe the development of agreements with collaborating partners such as Designated Agencies, Designated Hospitals, and local enforcement as indicated.

Maximum Points: 170

IV. SUBMISSION REQUIREMENTS

Delivery of Proposals

Proposals must be received no later than April 14th, 2017 at 4:30 PM at the address listed below:

Department of Mental Health
Attn: Jennifer Rowell
RFP: Secure Residential Recovery
280 State Drive NOB 2 North
Waterbury VT 05671

Proposals may be submitted electronically in lieu of a hard copy to the following email address: Jennifer.Rowell@vermont.gov. Please use standard PDF format for electronic submissions.

V. QUESTIONS CONCERNING RFP

Questions concerning this request for proposal should be directed to: Jennifer.Rowell@vermont.gov. Answers to submitted questions will be posted on the Department of Mental Health website (mentalhealth.vermont.gov) in a timely manner. There is no deadline for submission of questions

DMH will host a bidder's conference for interested and eligible vendors to ask questions regarding this RFP on January 6th, 2017 from 10 AM to 12 PM at the Waterbury State Complex, 280 State Drive, Waterbury, VT in the Linden Conference Room. Individuals interested in attending the bidder's conference should register for this event by emailing Jennifer Rowell at Jennifer.Rowell@vermont.gov.

VI. ADDITIONAL INFORMATION

DMH reserves the right to accept or reject any or all bids. If a contractor is selected, representatives will be invited to negotiate a contract. However, award of a contract from this RFP will be dependent on future allocations of funding for the development and operation of the proposed program(s) by the State Legislature.

DMH will not pay any bidder costs associated with preparing or presenting any proposal in response to this RFP.

The contractor will agree to the State of Vermont usual contract and payment provisions. These specifications are posted with this RFP (Appendix III) and include:

- Attachment C: Customary Provisions for Contracts and Grants
- Attachment E: Business Associate Agreement

- Attachment F: AHS Customary Contract Provisions

Appendix I

January 12th Report to House Corrections and Institutions: Permanent Replacement for Secure Residential Program

APPENDIX II

Report on Secure Residential Facility: Plan for Siting and Design

APPENDIX III

Required Attachments

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

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

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

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

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

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

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

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

settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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

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

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

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

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

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

Premises – Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000.00 Each Occurrence
\$2,000,000.00 General Aggregate
\$1,000,000.00 Products/Completed Operations Aggregate
\$1,000,000.00 Personal & Advertising Injury

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

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

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

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

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

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

12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

A. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient

will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

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

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

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

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

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

16. Taxes Due to the State:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. Certification Regarding Use of State Funds: In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.

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

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

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

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

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

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

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

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

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

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

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

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

(End of Standard Provisions)

Attachment C; Effective 7/1/2016

ATTACHMENT E BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its _____ **[Insert Name of AHS Department, Office or Division]** (“Covered Entity”) and **[Insert Name of Contractor/Grantee]** (“Business Associate”) as of _____ (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

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

The parties agree as follows:

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

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

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

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

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

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

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

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

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

2. Identification and Disclosure of Privacy and Security Offices. Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity’s contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

3. Permitted and Required Uses/Disclosures of PHI.

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

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

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

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

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

6. Documenting and Reporting Breaches.

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

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

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

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

7. Mitigation and Corrective Action. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry

out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity. Business Associate shall require a Subcontractor to agree to these same terms and conditions.

8. Providing Notice of Breaches.

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

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

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

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

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

9. Agreements with Subcontractors. Business Associate shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use

or disclosure of PHI. Business Associate shall provide a copy of the Business Associate Agreement it enters into with a subcontractor to Covered Entity upon request. Business associate may not make any disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

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

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

12. Accounting of Disclosures. Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

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

14. Termination.

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

14.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate the contract or grant without liability or penalty if Covered Entity believes that cure is not

reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under the contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

15. Return/Destruction of PHI.

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

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

16. Penalties and Training. Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

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

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

17.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the

right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

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

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

18. Miscellaneous.

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

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

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

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

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

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

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

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

(Rev: 5/5/15)

ATTACHMENT F

AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.
2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org
3. **Medicaid Program Contractors:**

Inspection of Records: Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to:

Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and Inspect and audit any financial records of such Contractor or subcontractor.

Subcontracting for Medicaid Services: Having a subcontract does not terminate the Contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the Contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the Contractor or subcontractor's performance is inadequate. The Contractor agrees to make available upon request to the Agency of Human Services; the Department of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers.

Medicaid Notification of Termination Requirements: Any Contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Department of Vermont Health Access, Managed Care Organization enrollee notification requirements.

Encounter Data: Any Contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency.**

The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.

5. **Voter Registration.** When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

6. **Drug Free Workplace Act.** The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.

7. **Privacy and Security Standards.**

Protected Health Information: The Contractor 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 contract. The Contractor shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

Other Confidential Consumer Information: The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

Social Security numbers: The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911(c)(3)).

9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected

with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

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

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

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

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

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

12. **Computing and Communication:** The Contractor 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 Contractor as part of this agreement. Options include, but are not limited to:

1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

The State will not supply e-mail accounts to the Contractor.

13. **Lobbying.** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.
14. **Non-discrimination.** The Contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.

Attachment F - Revised AHS -12/10/10



State of Vermont

Department of Mental Health

Commissioner's Office

Redstone Office Building

26 Terrace Street

Montpelier VT 05609-1101

<http://mentalhealth.vermont.gov/>

Agency of Human Services

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MEMORANDUM

TO: Representative Alice Emmons, Chair
House Corrections & Institutions Committee

FROM: Paul Dupre, Commissioner
Department of Mental Health

Michael Obuchowski, Commissioner
Department of Buildings and General Services

DATE: January 12, 2015

SUBJECT: Permanent Replacement for the Secure Residential Program

Pursuant to the Level 1 Psychiatric Care Evaluation required by the Fiscal Year fiscal year 2014 Appropriations Act, Sec. E.314.2, the Commissioner of Buildings and General Services, in consultation with the Commissioners Mental Health and Corrections, shall develop a proposal to establish a permanent secure residential facility no later than January 15, 2015.

Please find attached a copy of the Project Brief and the projected costs for the permanent replacement of the temporary Middlesex Therapeutic Community Residence (Secure Residential Program) in Middlesex.

Please let us know if you have any questions regarding the information contained within the report brief or require additional information.

Thank you.

C: Secretary Cohen, Agency of Human Services
Committee Members

Brief - 14 Bed Permanent Replacement

Secure Residential Recovery Treatment Facility

What is the current need

The current temporary secure residential recovery program, the Middlesex Therapeutic Community Residence (MTCR) in Middlesex, Vermont opened in June, 2013 with capacity to serve 7 residents. Since opening, the facility has served 24 residents with an average length of stay (LOS) of 4.5 months. The facility has admitted 22 individuals and seen 15 discharges over the past one and a half years of operation. The process for referral into the facility is managed by the DMH care management team in coordination with higher level of care facilities, most frequently inpatient treatment settings. There is an average of 3-5 referrals identified each month for potential admission to the MTCR.

As part of Act 79 passed in 2012, the DMH was given authority to develop an additional 7 Intensive Residential Recovery beds in the northwestern portion of the state. At the time, funding for these additional beds as part of the overall system of care was not appropriated to DMH. Subsequent to passage of this legislation, DMH on an ongoing basis has been evaluating the capacity of inpatient, crisis, and Intensive Residential Recovery (IRR) beds available and/or coming on line in the various regions of the state since the closure of the former Vermont State Hospital. During this time, the most challenging dispositions from inpatient care are those individuals who no longer require inpatient treatment services, but who may remain either emotionally or behaviorally dysregulated and in need of supervision within a secure (locked) treatment setting prior to return to the community. These individuals, while relatively small in numbers overall, account for a significant number of either Level I or other involuntary patient treatment days, resulting in longer lengths of stay in the finite number of inpatient beds, at the highest level of care.

The inability to manage timely transfer to less acute levels of care results in unnecessary delays in accessing the most acute inpatient beds from the community, corrections, and emergency department settings.

At the time of program development, the DMH determined that it would not seek a waiver of existing requirements for Therapeutic Community Residences, with regard to the potential use of emergency involuntary procedures, from the Division of Licensing and Protection for residents admitted to the program. Efforts to provide alternative spaces to minimize the need for such emergency procedures through planning for adequate programmatic space, resident room configurations, and access to the outdoors were prioritized, as well as, a stronger emphasis on a recovery-oriented residential environment. As such, the current MTCR Program does not have the physical space to safely manage individuals who may require periodic emergency involuntary procedures during the course of admission to the program. This programmatic limitation has been a significant consideration in the referral process and readiness of individuals who might otherwise have been served in this level of care.

What is proposed recommendation

Consistent with Act 79 mental health services transformation and development of a comprehensive continuum of care, the DMH proposes to repurpose the 7 remaining IRR beds identified in Act 79 into secure residential recovery beds. In combination with the 7 existing beds in the MTCR, the additional compliment of like beds will better address the care system's ongoing need for this level of care in the continuum of existing bed capacity. The proposed facility would be a newly constructed or renovated

14-bed, involuntary, secure (locked) residential facility located within the state of Vermont on lands to be acquired for this specific construction or renovation. The program would be a permanent replacement facility for the MTCR and continue to serve individuals who are not ready for discharge to the community, but who no longer require acute inpatient psychiatric care. Residents in this facility would not be in active crisis. The focus of care would continue to be provision of psychiatric rehabilitation services and psychosocial treatment delivered in a positive behavioral support framework to assist individuals to engage in their own recovery and develop the necessary skills to move to less intensive services and, ultimately, independent living. The permanent replacement program will require a waiver of current TCR standards to include the potential need for and use of brief emergency involuntary interventions with residents served.

Who this facility would serve

Residents of the facility would include those people who remain in acute care settings due to a high risk of self-harm, or neglect, or pose a danger to others. They would be individuals who do not require inpatient acute psychiatric services, but whose care needs exceed local community program resources. Some of these individuals are suicidal with a high risk of self harm. Other individuals manifest a high incidence of aggressive behaviors and are dangerous to others. Another, smaller, group would include those who are no longer clinically severely symptomatic, thus no longer requiring acute care, but who must remain in a secure environment for prolonged periods of time awaiting resolution of a criminal proceeding.

Specific examples of the kinds of behavior the facility would treat include:

- people with severe symptoms of mental illness such as delusions of persecution which only partially respond to acute hospital-based treatment and are prone to act on those delusions by assaulting others;
- individuals with mental illness whose mental status fluctuates with episodes of severe symptoms such as hallucinations in which assaultive behavior or self destructive urges are prominent, yet have prolonged periods of stability between these episodes;
- individuals with a primary mental illness and cognitive impairments, who have a high frequency of assaultive behaviors.

How many people would be served and for how long

Initially the facility would open with the transfer of the current 7 residents admitted to the MTCR. Up to 7 additional individuals who are currently in acute care settings would be admitted in the weeks and months following the opening of the facility, to its full capacity at 14 beds. As currently operating, this facility will continue to have capacity to be a longer term residential treatment program. It is anticipated that the length of stay could be approximately 3 months to 2 years or more. As individual progress and recovery is attained and as community program beds, capable of providing the next level of care for the population served become available, it is expected that the length of stay for the secure residential facility would shorten. Unlike the current MTCR, the permanent replacement facility would have the capacity to respond to emergency situations utilizing emergency involuntary interventions if needed to stabilize individual resident assaultive behavior. Currently, assaultive behaviors warranting such intervention, require residents to be transferred to other care settings, most often emergency department services and/or psychiatric inpatient care settings until the behavioral crisis has passed and the individual's care needs can be managed in less acute levels of care. The proposed permanent secure residential program would be able to manage such brief episodes of resident behavior, rather than potentially unnecessary transfers to higher levels of care settings and requiring assessment outside of the program.

How the program would fit within the mental health system

Initially, only inpatients in acute care hospitals who meet the criteria for the secure residential facility would be served by the program. Individuals from the secure residential facility could transfer to other community residential care services within the existing continuum of care, such as intensive residential recovery programs. *It should be noted that violent behavior in and of itself is not a sufficient criterion for admission to the proposed secure residential facility. Persons in acute psychotic crises (who might be assaultive) would be admitted directly to an acute inpatient unit of a general medical hospital. On the other hand, individuals who demonstrate dangerous behavior as a result of mental illness but are not in a psychotic crisis and do not require the medical services of an inpatient acute care unit, would be eligible for the secure residential program.*

Program and services that would be provided

Program characteristics include the capacity to maintain a safe, secure environment regardless of the level of risk. The environment of care should permit separation of sub-groups so that all are safe and individuals with a history of abusive treatment by others are not further traumatized by contact with individuals prone to aggressive, assaultive behavior. Staff would be trained and credentialed to work with this population group. Program interventions would focus on connecting with the resident using positive behavioral supports designed to facilitate the individual's growth in skills needed for return to the community. The focus of programming would be:

- Behavioral analysis and development of individualized treatment plans
- Treatment of underlying mental illness
- Life skills development
- Psycho-social and psycho-educational programming focused on learning how to be safe and responsible citizens
- Supporting and motivating residents (and their home communities) to engage in a recovery process
- Discharge planning

Staffing required

Because of its residential treatment mission the staffing requirements of the 14 bed secure residential recovery facility differ significantly from those of an acute inpatient psychiatric unit. The current MTCR utilizes 32 staff positions who provide program and treatment services. Personnel include Registered Nurses, Mental Health Specialists, and Mental Health Recovery Specialists, a Program Director, a behavioral Psychologist, a Social Worker, and a half-time Psychiatrist. Additional resident capacity would proportionately increase the number of Mental Health Specialists and Mental Health Recovery Specialists and hours of psychiatry oversight needed.

Accreditation and certification

The current MTCR is licensed by the State of Vermont, Department of Aging and Independent Living, Licensing and Protection Division, as a Therapeutic Community Residential (TCR) Program. Licensing for the 14 bed program would be the same. Capacity to provide emergency involuntary interventions will require a waiver of the current TCR licensing requirements. Other forms of program accreditation may be sought through nationally recognized accrediting organizations and would be identified as permanent program development and planning occurs.

Estimated cost

The estimated cost of this project, excluding land acquisition costs, would be approximately \$12M. Attached please find the preliminary program for the development of this facility as well as the project cost estimate calculations. The total capital cost with debt service spread over 20 years is estimated to be \$16.2M. The projected average annual operating costs would be approximately \$5.1M.

Potential revenue sources for operating costs

Given the requirement to adequately fund the community system of care, the 14 bed residential program (at least initially) would be funded primarily through Global Commitment (Medicaid), with some private pay.

Time frame for planning and implementation of permanent facility

A time line for planning and implementation will be developed in the upcoming year subsequent to this initial report, as well as, any other activities as directed by statutory requirements that may be outlined in this upcoming legislative session. Planning activities currently rely on any unspent planning funds; \$50K allocated in the 2013-2014 legislative session to BGS, and may require additional planning dollars in the FY 16 appropriation in order to achieve project milestones going forward. In the upcoming year, DMH will also be analyzing Certificate of Need (CON) Application requirements for the changes proposed in the program and this report as well.

THERAPEUTIC COMMUNITY RESIDENTIAL FACILITY
Program Comparison (Previous 15-bed vs 14-bed)

Mental Health - Adult Primary Unit		2008 Program			2010 SD Allocation			2014 Program (14-Beds)		
Ref		No. of Spaces	NSF/	Total NSF	No. of Spaces	NSF/	Total NSF	No. of Spaces	NSF/	Total NSF
			Space			Space			Space	
	Unit Space	Cluster A (7 Beds)			Cluster A (4 Beds)			Cluster A (7 Beds)		
1	Patient Room, Private	6	120	720	3	135	405	6	120	720
2	Patient Room, Private, Medical	1	200	200	1	178	178	1	200	200
3	Toilet/Shower, Patient	6	50	300	3	38	114	1	50	50
4	Toilet/Shower/Tub, Patient HC	1	80	80	1	58	58	1	120	120
5	Activity/Recreation	1	200	200	0	200	0	0	200	0
6	Living Room	0	160	0	1	152	152	1	160	160
	Dining Room							10	30	300 Added Dining Room on each unit
7	Kitchenette	1	60	60	1	100	100	1	100	100
8	Quiet Sitting Room	1	160	160	1	95	95	2	100	200
Subtotal				1,720			1,102			1,850

	Unit Space	Cluster B (8 Beds)			Cluster B (5 Beds)			Cluster B (7 Beds)		
1	Patient Room, Private	7	120	840	4	139	556	6	120	720
2	Patient Room, Private, Medical	1	200	200	1	204	204	1	200	200
3	Toilet/Shower, Patient	7	50	350	4	37	148	1	50	50
4	Toilet/Shower/Tub, Patient HC	1	80	80	1	64	64	1	120	120
5	Activity/Recreation	1	200	200	0	200	0	0	200	0
6	Living Room	0	160	0	1	177	177	1	160	160
	Dining Room							10	30	300 Added Dining Room on each unit
7	Kitchenette	1	60	60	1	104	104	1	100	100
8	Quiet Sitting Room	1	160	160	1	99	99	2	100	200
Subtotal				1,890			1,352			1,850

	Unit Space	Cluster C (0 Beds)			Cluster C (6 Beds)			Cluster C (0 Beds)		
1	Patient Room, Private	0	120	0	4	136	544	0	136	0
2	Patient Room, Private, Medical	0	200	0	2	178	356	0	178	0
3	Toilet/Shower, Patient	0	50	0	4	36	144	0	36	0
4	Toilet/Shower, Patient HC	0	80	0	2	67	134	0	67	0
5	Activity/Recreation	0	200	0	0	200	0	0	200	0
6	Living Room	0	160	0	1	183	183	0	183	0
7	Kitchenette	0	60	0	1	93	93	0	93	0
8	Quiet Sitting Room	0	160	0	2	100	200	0	100	0
Subtotal				0			1,654			0

Team Care and Support

1	Exam Room	1	120	120	1	128	128	1	120	120
2	Charting and Records Storage	1	300	300	1	152	152	1	200	200
3	Team Conference/Report Room	1	360	360	1	343	343	1	360	360
4	Medication Room	1	100	100	1	98	98	1	100	100
5	Tub Room	1	120	120	1	113	113	0	120	0

Also serves as psychiatry space when on site
Probably does not need to exceed 200 for facility size

Included on Units

6	Clean Utility	1	100	100	1	98	98	1	100	100
7	Soiled Utility	1	100	100	1	101	101	1	100	100
8	Storage, Patient Clothing	1	80	80	1	79	79	1	80	80
9	Storage, Equipment	1	80	80	1	129	129	0	80	0
10	Housekeeping /Cleaning Supply Stor	1	120	120	1	128	128	1	120	120
11	Staff Lockers/Team Room	1	160	160	1	157	157	1	100	100
12	Toilet, Staff	1	60	60	1	61	61	1	60	60
Subtotal			1,700			1,587			1,340	

Could be reduced as conference/report room already exists.

Dining and Residential Activities

1	Dining Room	1	375	375	1	620	620	0	375	0
2	Kitchen	1	750	750	1	301	301	1	750	750
3	General Storage	1	750	750	1	254	254	1	750	750
4	Seclusion Suite									
4	- Seclusion Room	1	100	100	2	98	196	1	100	100
5	- Restraint Room	0	100	0	0	100	0	1	100	100
6	- Ante Room	1	100	100	1	132	132	1	100	100
7	- Toilet Room	1	60	60	1	48	48	1	60	60
8	- Restraints Closet	1	20	20	0	20	0	1	20	20
9	Toilet, Patient	1	60	60	2	38	76	1	60	60
10	Patient Laundry	1	160	160	1	137	137	1	160	160
11	Comfort Room	0	120	0	1	99	99	0	100	0
12	Toilet, Visitor	1	60	60	1	65	65	1	60	60
Subtotal			2,435			1,928			2,160	

Added Dining Room on each unit

Include this capacity

Include this storage area

Delete

Therapy and Work Area

1	Exercise/Fitness	1	225	225	1	306	306	1	225	225
2	Entrance Vestibule	1	80	80	2	118	236	1	80	80
3	Multi-Purpose Activity (Noisy)	1	400	400	1	451	451	1	400	400
4	Multi-Purpose Activity (Quiet)	0	225	0	1	451	451	0	225	0
5	Bi-Purpose: Group Therapy/Class Rm	1	225	225	1	361	361	1	225	225
6	Comfort Room	1	120	120	1	97	97	1	120	120
7	Interview/Consult Rooms	1	120	120	1	150	150	0	120	0
8	Bi-Purpose: Group Therapy/Library	1	225	225	1	304	304	0	225	0
9	Pastoral Parlor/Serenity Room	1	160	160	1	208	208	0	160	0
10	Volunteers	0	160	0	1	152	152	0	160	0
11	Toilet, Visitor	1	60	60	0	60	60	1	60	60
Subtotal			1,615			2,716			1,110	

Delete

Delete

Delete

Clinical Team Cluster

1	Office, Nurse Manager/Admin Supervisor	1	120	120	1	120	120	0	120	0
2	Office, Program Manager	1	120	120	1	118	118	1	120	120
3	Office, Psychiatrists	1	60	60	1	59	59	0	60	0
4	Office, Social Workers	1	100	100	1	101	101	1	160	160
5	Office, Quality Assurance	1	100	100	1	100	100	0	100	0
6	Workstation, Secretarial	1	64	64	1	79	79	1	64	64

Would increase for shared space with Nurse

Delete

7	- Unit Mailboxes	1	5	5	1	6	6	1	5	5	
8	- Equipment/Files/Storage	1	100	100	1	127	127	1	100	100	
9	Office, AT/OT	1	150	150	1	145	145	0	150	0	Delete
10	Wrkstns, Rehab, MHW & Hoteling	2	40	80	2	39	78	1	40	40	Reduce to 1
11	Toilet, Staff	1	60	60	2	64	128	1	60	60	
Subtotal				959			1,061			549	

Housekeeping Services											
1	Storage Cleaning Supplies	0	150	0				1	150	150	includes area for flammable material; to be located in adjacent space in Materials Management. Stock in equipment storage rooms....not in Housekeeping Central.
2	Storage, Equipment	0	150	0				1	150	150	
3	Housekeeping Closets	0	60	0				1	60	60	Distributed throughout in addition to those programmed on patient unit and in dietary.
4	Washer/Dryer Room	0	100	0				1	100	100	Commercial equipment -Delete. This should be part of patient laundry. We do not need this capacity on site. No - BGS Use
Subtotal				0						460	

Maintenance and Grounds											
1	Office/Plan Room/Library	0	100	0				1	120	120	Delete No - BGS Use
2	Maintenance Shops	0	170	0				1	250	250	includes: key room, flammable materials storage room (150 sf), carpentry, plumbing, electrical, paint, metal working and welding. A clean and a dirty staging assembly area surrounded by work cages for benches and tools We do not need this capacity on site No - BGS Use
3	Grounds Equipment and Supplies	0	300	0				1	300	300	Out structure: a couple large riding mowers, a small backhoe, ditch witch etc. 3 bay garage outbuilding We do not need this level of equipment storage No - BGS Use
4	Workstation-Maintenance Workers	0	48	0				1	48	48	Shared by two
Subtotal				0						718	

Total 15-bed Unit		10,319	11,400	14-bed	10,037
Number of Units		1	1		1
Total NSF		10,319	11,400		10,037
Department Total Net SF (NSF)					
NSF to DGSF Multiplier		10,319	11,400		10,037
Departmental Gross SF (DGSF)		1.55	1.47		1.55
BGSF Multiplier		15,994	16,720		15,557
Building Gross SF (BGSF)		1.25	1.25		1.25
		19,993	20,900		19,447
Number of Beds		15	15		14
DGSF		15,994	16,720		15,557
DGSF/Beds		1,066	1,115		1,111
BGSF		19,993	20,900		19,447
BGSF/Bed		1,333	1,393		1,389

DEPARTMENT OF BUILDINGS & GENERAL SERVICES

PROJECT COST ESTIMATE

Date: January 9, 2015

Dollars based on December 2014

Project Name: NEW 14-BED THERAPUETIC COMMUNITY RESIDENTIAL FACILITY

Location: To Be Determined

Construction Cost (19,500 gsf x 450/sf)	\$8,775,000
A&E 8% x Construction (Fee Adjustable)	\$702,000
Reimbursable 2% x Construction	\$175,500
Administrative, Bonds, Art and Inspections 5% x Construction	\$438,750
Contingency (5% - 10%) x Construction	\$877,500
Special Items for Programming; Consultant Fees; Site Considerations; Fitup Costs, etc.	\$438,750
Land Acquisition	To Be Determined
GRAND TOTAL	\$11,407,500

Estimate based on Today's dollars

Energy conservation & use of renewable energy measures not evaluated in estimate

Engineer: Michael J. Kuhn



State of Vermont
Agency of Human Services
Office of the Secretary
208 Hurricane Lane, Suite 103
Williston, VT 05495
humanservices.vermont.gov

Hal Cohen, Secretary

[phone] 802-871-3009
[fax] 802-871-3001

Peter Hood, Chair
Middlesex Select Board
5 Church Street
Middlesex, VT 05602

Dear Mr. Hood,

As you may be aware, the Department of Mental Health proposed an expansion of the current 7-bed secure residential program in January, 2015 as part of permanent replacement planning for this facility. Subsequently, the Legislature requested that the Agency of Human Services conduct additional exploration of program size, operating costs, and program management during 2015. The AHS is reporting back to the Legislature this month on the progress made in planning and developing a permanent secure residential facility to replace the temporary facility located in Middlesex.

While I am prepared to provide a report of progress this month, I am not yet ready to make a final recommendation in all of the areas required for evaluation. During this current legislative session, AHS and the Department of Mental Health will be continuing to explore the most cost-effective siting and program management options for this permanent facility. The process for determining an accessible location and workforce, the population mix to be served, staffing levels, and the financial resources necessary to support the facility are all subject to legislative scrutiny prior to considering project approval. Additionally, the project will also require new certificate of need review and approval. Given these ongoing evaluation components to be resolved, a final recommendation and cost request will likely not be introduced until the beginning of the 2017 legislative session.

The Town of Middlesex has currently agreed to a closing date of January 1, 2018 for this facility. This timeline will be quite challenging given current status and review requirements prior to possible authorization by the Legislative. I am, therefore, seeking the approval of your Board to extend the closing date for this facility until January 1, 2020 to provide ample time for a permanent program to be developed as successor to this temporary facility. I believe that this request represents the outer most time frame to be anticipated and appreciate the flexibility and good will we have experienced in working with the Town of Middlesex. I am happy to provide additional information to your Board as needed. Thank you for your consideration. Please feel free to contact me with any questions.

Sincerely,

Hal Cohen, Secretary
Agency of Human Services

Cc: Justin Johnson, Secretary Agency of Administration
Frank Reed, Commissioner of Mental Health
Michael Obuchowski, Commissioner of Buildings and General Services

APPENDIX II

Report on Secure Residential Facility: Plan for Siting and Design

**Report to
The Vermont Legislature**

**Report on
Secure Residential Facility: Plan for Siting and Design**

**In Accordance with Act No. 26:
An act relating to capital construction and State bonding.**

Submitted to: Representative Johnson, Chair, House Appropriations
Representative Emmons, Chair, House Corrections and Institutions
Representative Pugh, Chair, House Human Services
Senator Ayer, Chair, Senate Health and Welfare
Senator Kitchel, Chair, Senate Appropriations
Senator Flory, Chair, Senate Institutions

Submitted by: Hal Cohen
Secretary

Prepared by: Frank Reed
Commissioner, Department of Mental Health
Nick Nichols
Policy Director, Department of Mental Health

Report Date: February 22nd, 2016



I. Legislative Charges for Secure Residential Facility:

Act 79 (2012):

“Sec. 10. SECURE RESIDENTIAL RECOVERY PROGRAM

(a) The commissioner of mental health is authorized to establish and oversee a secure seven-bed residential facility owned and operated by the state for individuals no longer requiring acute inpatient care, but who remain in need of treatment within a secure setting for an extended period of time. The program shall be the least restrictive and most integrated setting for each of the individual residents. (b) The opening of the facility described in subsection (a) of this section is contingent upon the passage of necessary statutory amendments authorizing judicial orders for commitment to such a facility, which shall parallel or be included in 18 V.S.A. § 7620 (related to applications for continuation of involuntary treatment), and shall include the same level of statutory protections for the legal rights of the residents as provided for individuals at inpatient facilities.”

Act 178 (2014):

“the Commissioner of Buildings and General Services, in consultation with the Commissioners of Mental Health and Corrections, shall develop a proposal to establish a permanent secure residential facility no later than January 15, 2015.”

Act 26 (2015):

“Sec. 30. SECURE RESIDENTIAL FACILITY; PLAN FOR SITING AND DESIGN

(a) The Secretary of Human Services shall conduct an examination of the needs of the Agency of Human Services for siting and designing a secure residential facility. The examination shall analyze the operating costs for the facility, including the staffing, size of the facility, the quality of care supported by the structure, and the broadest options available for the management and ownership of the facility.”

II. Background to Date:

The current temporary secure residential recovery program, the Middlesex Therapeutic Community Residence (“MTCR”) in Middlesex, Vermont, opened in June 2013 with capacity to serve 7 residents. Since opening, the facility has served 29 residents. In the two and a half years of operation, the facility has discharged 22 individuals and has an average length of stay (LOS) of 5 months. The process for referral into the facility is managed by the Department of Mental Health (“DMH”) care management team in coordination with the higher level of care facilities, most frequently inpatient treatment settings. There is an average of one referral identified each month for potential admission to the MTCR. The program serves individuals with mental illness who no longer require inpatient acute psychiatric hospitalization, but their care requires a secure (locked) setting, as well as individuals who are no longer severely symptomatic but must remain in a secure environment until resolution of judicial process. Given the facility’s licensing as a Therapeutic Community Residence (TCR) and space limitations, the program does not serve individuals who require emergency involuntary procedures (i.e. seclusion and restraint).

The development and purpose of the Secure Residential Recovery (“SRR”) Program was originally conceptualized as part of the Vermont Futures Project, which sought to design and develop an array of investments in essential community capacities and reconfigure the Vermont State Hospital into a new system of inpatient, rehabilitation, and residential services for adults. As part of this new system, the SRR program was designed to serve individuals who would otherwise remain at the Vermont State Hospital due to a high risk of self-harm or neglect, or pose a danger to others. Individuals served by this program do not require inpatient acute psychiatric services, but their care needs exceed local community resources. Some of these individuals are suicidal with a high risk of self-harm. Other individuals manifest a high incidence of aggressive behaviors and are dangerous to others but are not in an acute psychotic crisis. Another smaller group includes those who are no longer clinically severely symptomatic, but must remain in a secure environment for prolonged periods of time awaiting resolution of a judicial process.

Given that the MTCR is a temporary facility with a planned closure in 2018, DMH has been working with state and community partners to assess the need for a permanent SRR Facility. In January 2015, DMH and the Department of Building and General Services (“BGS”) submitted a proposal to the House Committee on Corrections and Institutions for the permanent replacement of the MTCR. DMH recommended the creation of a 14-bed, involuntary, secure (locked) residential facility located within the state of Vermont on lands to be acquired for construction or renovation. As proposed, the program would require a waiver of current TCR standards to include the potential need for and use of brief involuntary interventions with residents served. Residents of the facility would include those people who remain in acute care settings due to a high risk of self-harm, or neglect, or pose a danger to themselves or others. They would be individuals who do not require inpatient acute psychiatric services, but whose care needs exceed local community program resources. The cost to develop the program, excluding land acquisition costs, was estimated to be approximately \$12 million, with a projected annual operating cost of \$5.1 million using Global Commitment funding with some private pay. A copy of the report is included in the attachments of this report.

Based on that report and subsequent discussions between the Agency of Human Services (AHS) and the legislature regarding other high-need populations being served by other AHS departments (e.g. Department of Corrections and the Department of Disability, Aging and Independent Living) that may require secure residential treatment, the legislature subsequently directed the Secretary of AHS to “conduct an examination of the needs of the Agency of Human Services for siting and designing a secure residential facility. The examination shall analyze the operating costs for the facility, including the staffing, size of the facility, the quality of care supported by the structure, and the broadest options available for the management and ownership of the facility” (Act 26). As part of that examination, AHS has been asked to assess how the development of an SRR Facility may address or overlap with the needs of individuals who are currently being served by other departments but have similar needs for secure residential treatment. These individuals include a Department of Corrections (“DOC”) offender population that may be eligible for release and/or medical furlough to treatment services, DOC offenders with significant serious functional impairment who would meet the criteria for orders of non-hospitalization, and elderly offenders who are eligible for long-term care services, but given offense history are challenged to be admitted to extended care nursing facilities.

The following status update provides a summary of planning and analysis completed to date and recommendations for a continuing planning process.

III. Plan for Siting and Design

Secure Residential Facility Request for Information (“RFI”)

As part of Vermont’s planning for the siting and design of a permanent SRR Facility, AHS posted an RFI in the fall of 2015 seeking input from interested parties who wished to provide information, recommendations and/or conceptual proposals regarding the planning, development, operations and/or management of the new SRR Facility. Specifically, the RFI requested information on the types of roles interested parties would like to play in the design, development and/or operation of the new SRR Facility and conceptual proposals or initial recommendations regarding the siting and location of the facility, the size and capacity of the facility, estimates of operating costs for the facility, the quality of care supported by the structure, and potential options available for the management and ownership of the facility.

RFI responses were received from two architectural firms, one developer, one long-term care corporation, and three service provider organizations. A summary of the responses is as follows:

Anmahian Winton Architects (Architecture firm)

- Proposal to provide full architecture and engineering design services for the new SRR facility, including:
 - Planning and preliminary design, including site test fits
 - Interaction with AHS/DMH community and key stakeholders for the project
 - Preparation of materials required for Local, State, & Department approvals
 - Documents for construction permitting
 - Development of design and construction documents
 - Construction administration.

Architecture+/Black River Design/Engelberth Construction (Architecture, Design and Property Development Firms)

- Proposal to provide architectural and engineering design services
- Provides initial analyses regarding size, capacity, siting, design, ownership of the SRR Facility
- Has background working with Vermont on similar projects (e.g. Vermont Psychiatric Care Hospital; initial design/planning for the SRR Facility).

Brattleboro Retreat/Collaborative Solutions/Second Spring (Inpatient and residential treatment providers)

- Proposal to develop and own the SRR Facility on Retreat Campus; would be operated by Collaborative Solutions

Genesis Healthcare (Post-acute care mental health and substance use service provider in MA)

- Interest in identification and development of an appropriate physical plant setting for the SRR Facility, as well as operation of the program
- Identified potential site at former Rutland manor Residential Care Building.

Hundred Acre Homestead (Therapeutic Community Residence in Worchester, VT)

- Interest in “any role mutually agreed upon by State and Hundred Acre Homestead”, including development and operation of the SRR Facility on their property.

Northeast Kingdom Human Services (Designated Agency)

- Proposal to create LLC (wholly owned subsidiary of NKHS) that would develop and operate social service campus in Essex County, which would include the SRR
- Already initiated significant planning with numerous stakeholder (board, town of Bloomfield, legislators, architect, landowner) and developed business/development plan
- Proposing to purchase Bloomfield Ridge Property in Essex County for siting of the SRR Facility; campus could be expanded to include small residential units for “graduates.”

Pizzagali Properties (Property Management and Developer)

- Submitted several proposals for siting SRR:
 - Development on Northwest State Correctional Facility campus; need to be master-planned to avoid interfering with possible expansion of Northwestern State Correctional Facility
 - Acquisition/development of property in Meadowland Business Park, South Burlington
 - Development of SRR Facility on Pizzagali-owned property in St. Albans (Grice Brook Road)
- Could act in varying roles, including selling or leasing property and/or developer of property.

AHS is currently engaging in more detailed discussion regarding initial interests expressed in the RFI response and assessing the feasibility of different models for development and operation of the SRR Facility discussed in the RFI responses.

Siting Considerations

State Owned Lands

Given the potential for sharing existing facility infrastructure (e.g. heating) and services (e.g. food service), AHS asked BGS to assess two state-owned sites that may have enough property to site a new SRR Facility: Northwestern State Correctional Facility (“NWSCF”) and Southern State Correctional Facility (“SSCF”). Criteria used to assess the two sites included lot size, physical characteristics, utilities, zoning/permitting, potential construction issues, and the quality of the program. The BGS analysis is as follows:

Site Consideration Fact Sheet

Completed: November 19, 2015

Criterion	Description/Questions	SSCF	NWSCF
Lot Size	Acreage	149.47 Acres; includes 101.51 A - SSCF, 31.93 A Industrial Park plus 16.03 A deer yard. SSCF area also includes 57 A deer yard. The fenced in area is approximately 17.88 acres.	161 Acres; w/ 32.6 acre prime ag conservation easement to the Town of St. Albans as well as a utility easement to Town for Sewage Treatment Plant
	Is the site capable of supporting development?	Planned for additional 150-beds	Plans show 500-bed & 700 bed build-out
	Adequate Circulation Space (Cars, Trucks, Parking, Loading)?	Included in planning	Included in planning
	Adequate for Buffers, Safety, & Security?	Yes, Question on separating MH Beds from DOC Beds?	Reduced on West side. Same ques re: Separation
Physical Characteristics	Flat, Rolling, or Steep Slopes?	Flat w/ Steep Slopes at perimeter	Generally flat and rolling.
	Are Soils Well Drained?	Yes	Not necessarily
	Ledge or Rock Outcroppings?	Limited w/in Industrial Park	Not aware of any
	Does Site lend itself to development?	Separation of MH vs DOC beds?	Separation of MH vs DOC beds?
	Does site support building configuration?	Unknown, but probably	Unknown, but probably
Utilities	Municipal Water and Sewer?	Sized & Allotted I believe	Water may need upgrade, but sewage definitely needs upgrade
	Electrical Service	Verify size	Verify size
	Natural Gas	No	No
	Telephone/CATV	Yes	Yes
	Storm water Utility?	No but on-site capable	No, but on-site capable
Zoning/ Permitting	Permitted or Conditional Use?	Permitted	Conditional I believe
	Special Zoning District?	Certain site restrictions	Special Correctional Facility Zone very restricted
	Special Restrictions?	Re-negotiate ability to serve w/ Town	Limiting expansion capabilities
	Conform with Local Plan	Yes	Questionable
	Land Use Permit Status?	Permitted for additional 150-beds	Will need an Amendment
Construction Issues	Impacts on existing Facilities?	Security concerns	Security concerns
	Special Logistical Issues?	Maintain Security of facility during construction	Maintain Security of facility during construction Infrastructure upgrades
	Scheduling Concerns?	None aware of	Infrastructure upgrades
Quality of Program	Integrated Facility?	MH vs DOC Beds?	Infrastructure & MH vs DOC
	Separate Facility supported by Existing Infrastructure?	Logistics of providing services to a separate building	Separate building self-supporting?

Additional considerations highlighted by BGS as part of the analysis of these sites included:

- Due to the nature of the SRR Facility, it would most likely need to have its own core services, recreation yard and security perimeter inside the confines of the existing facility footprint.
- For the SSCF site, access to the SRR Facility would most likely have to be from the adjacent property that is supposed to be a future industrial park.
- Populations would most likely need to be kept separated. Sharing of services with the inmate population would be a challenge.
- For the SSCF site, the SRR Facility would have to share the open area that is currently a ballfield and the future site of a 150 bed unit.
- Town support for the creation of a new secure treatment facility may be an issue.
- While sharing infrastructure may be possible at both facilities, BGS would need to verify the capacity of the heat plant at SSCF. The state would need to upgrade the heat plant at NWSCF, as well as verify the water service. The sewage treatment plant would require an upgrade.
- Regarding services, the food service at NWSCF would also need to be upgraded for this added capacity. The balance of available services would need to be addressed during the programming for the facility based on the mix of bed types as well as the service being considered.

While these two locations may represent potential cost savings based on existing state ownership, cost investments and infrastructure issues need further analysis if these are prioritized sites for consideration.

Non-State Owned Lands and Acquisition

AHS and BGS will also continue to explore the potential of the SRR Facility on non-state owned lands. As part of the Vermont State Hospital Futures Project, selection criteria has been established to provide a comprehensive and quantifiable evaluation of the multiple variations of the site options proposed for consideration to house the permanent SRR Facility to replace the current MTCR. These criteria will be used to compare the relative viability of each site to house the proposed facility. The ultimate site option selected will also need to consider the anticipated capital and operational costs estimated for each option, as well as the potential revenue stream to offset the operational costs to provide the most affordable and sustainable program to serve the State's needs over the long term. Accordingly, the quality of care that can be acquired for each of the options under consideration should also weigh heavily in the final decision.

Below is an itemized list of the criteria, along with specific questions to be considered when evaluating each variation and option:

- 1) Criterion 1 – Lot Size (Acreage_____):
 - Is the site capable of reasonably providing for the Building(s), Future Expansion, Outdoor Access?
 - Is there space to accommodate safe Vehicular (truck & auto) and Pedestrian Circulation, Roads, Parking, and Loading Facilities?

- Is there adequate frontage/Access for sight distances?
 - Is the site large enough to provide for buffers, safety, and security?
- 2) Criterion 2 – Site Physical Characteristics:
- Is the site flat, rolling, or does it have steep grades? (5% for parking; 10% for buildings)
 - Are the soils well drained?
 - Is there any rock or ledge outcroppings?
 - Does the site configuration lend itself to the proposed development?
 - Does the site support the optimum building configuration?
- 3) Criterion 3 – Utilities:
- Is municipal water and sewer available?
 - Is there adequate electrical service?
 - Is Natural gas available?
 - Is telephone and cable television available?
 - Is there a storm water utility or provisions for municipal storm water disposal?
- 4) Criterion 4 – Zoning/Permitting:
- Is this a permitted use?
 - Is this a conditional use?
 - Is the site within a special zoning district?
 - Are there special restrictions/requirements on the site?
 - Can the site be planned to conform with Planning/Zoning criteria?
 - Is there a current or will we require a State Land Use Permit?
- 5) Criterion 5 – Neighborhood:
- Is the site located in an Institutional area?
 - Is the site located in a Residential area?
 - Is the site located in a Mixed-Use area?
 - Is this a rural, suburban or urban setting?
 - Are there view opportunities?
- 6) Criterion 6 – Construction Issues:
- Are there existing buildings on site that need demolition?
 - Is this a new building or renovation?
 - Are there construction impacts on existing facilities?
 - Are there special logistical issues to address for construction?
 - Will these impacts and issues have scheduling implications?
 - Are there existing facilities that need to be replaced?
- 7) Criterion 7 – Quality of Program/Service:
- Can the site accommodate a fully integrated facility?
 - Is integration possible for clinical and medical services?
 - Can the site accommodate integration of infrastructure and support services?
 - Is the site in close proximity to services if integration is not possible?

While siting of the permanent SRR is still to be determined, AHS and BGS continue to examine additional potential sites as they become identified.

Extension of Time for Closing MTCR

Preliminary communications with the Chair of the Middlesex Select Board regarding a request for an extension of the current time line with the Town of Middlesex have been positive. A formal request for a two-year extension has been submitted by the Secretary of the Agency of Human Services to the Middlesex Select Board Chair (see attached). Initial discussions have also indicated there may be interest in siting the permanent SRR Facility in Middlesex.

Population Mix/Planning Considerations

As described above, AHS Central Office has been working with DMH, DOC, and the Department of Disability, Aging and Independent Living (“DAIL”) to identify potential populations to be served by the SRR program that would meet the greatest need across the AHS. A discussion of the current and potential population eligibility and mix is as follows:

Description of statutory eligibility

Act 160 of 2012 created a statutory definition of the SRR Program and gave authority to the Commissioner of DMH to oversee and seek to have patients receive treatment in secure residential recovery facilities. Act 160 defines the “Secure residential recovery facility” as a “residential facility, licensed as a therapeutic community residence (as defined in 33 V.S.A. § 7102(11)), for an individual who no longer requires acute inpatient care but who does remain in need of treatment within a secure setting for an extended period of time.” Under current statute, individuals may only be admitted to the SRR Facility if they are currently receiving inpatient care, and the Commissioner files a court application for continued treatment that results in an order of non-hospitalization requiring the individual reside at the SRR facility. If the State seeks to admit individuals to the SRR Facility directly from the community or a correctional facility, changes in statutory eligibility will need to be sought.

Mental Health Population

As described in the AHS and BGS report to House Corrections and Institutions submitted in January 2015 (see attached), DMH has proposed that residents of the new SRR Facility include those people who remain in acute care settings due to a high risk of self-harm, neglect, or pose a danger to others. They would be individuals who do not require inpatient acute psychiatric services, but whose care needs exceed local community program resources. Some of these individuals are suicidal with a high risk of self-harm. Other individuals manifest a high incidence of aggressive behaviors and are dangerous to others. Another, smaller group would include those who are no longer clinically severely symptomatic, thus no longer requiring acute care, but who must remain in a secure environment for prolonged periods of time awaiting resolution of criminal proceedings.

Specific examples of the kind of behavior the facility would treat include:

- People with severe symptoms of mental illness such as delusions of persecution which only partially respond to acute hospital-based treatment and are prone to act on those delusions by assaulting others;
- Individuals with mental illness whose mental status fluctuates with episodes of severe symptoms such as hallucinations in which assaultive behavior or self-destructive urges are prominent, yet have prolonged periods of stability between these episodes;
- Individuals with a primary mental illness and cognitive impairments, who have a high frequency of assaultive behaviors.

It should be noted that violent behavior in and of itself would not be a sufficient criterion for admission to the proposed SRR Facility. Persons in acute psychotic crises (who might be assaultive) would be admitted directly to an acute psychiatric inpatient unit of a hospital. On the other hand, individuals who demonstrate dangerous behavior as a result of mental illness but are not in a psychiatric crisis and do not require the medical services of an inpatient care unit, would be eligible for the SRR.

DOC Inmate Population

AHS, DMH and DOC are working to assess the viability of using the permanent SRR program to also treat individuals who are involved in the correctional system. Discussions have focused on identifying a subset of inmates who meet all of the following criteria:

- Impaired due to a mental illness to the point that they lack the ability to meet the ordinary demands of life,
- Substantially impaired when it comes to functioning in a correctional environment,
- Eligible to be released from DOC custody, and
- Meet the legal criteria to be placed on an order of non-hospitalization.

Accordingly, there may be instances wherein, in the discretion of the Commissioners of the Departments of Mental Health and Corrections, placement of these individuals may serve important rehabilitative, therapeutic and re-integration objectives.

DOC reports that the most prevalent types of disorders among inmates that might be referred to the SRR Facility are as follows:

- 1) Schizophrenia Spectrum and other Psychotic Disorders: Individuals suffering from these disorders experience distressing symptoms in at least one of the following domains: delusions, hallucinations, disorganized thinking (speech), disorganized or abnormal motor behavior (including catatonia) and negative symptoms (e.g. diminished emotional expressions and avolition).
- 2) Bipolar Disorders: Individuals suffering from these disorders experience periods of mania characterized by elevated, expansive or irritable mood with increased activity. The individual may describe that they feel “on top of the world” and may exhibit inflated self-

esteem, decreased need for sleep, rapid and pressured speech, racing thoughts, distractibility and excessive goal directed thinking.

Details of the collaboration between the DOC and DMH resulting in the possible assignment of DOC populations who meet the criteria outlined above to short-term therapeutic stays at the SRR Facility have yet to be fully worked out. Among the factors to be addressed would be measures to safeguard the availability of Medicaid funding for treatment services provided by the SRR Program in serving this population.

Long-Term Care Eligible Population

AHS, DMH, DOC and DAIL have also examined expected service needs for elderly offenders who are eligible for long-term care services, but given offense history are challenged to be admitted to extended care nursing facilities. At this time, AHS does not feel this population would be appropriate for the SRR Facility, but DMH and DAIL have been meeting with potential providers to discuss specialized services for the DOC offender population that is eligible for release and long-term care services. To date, DMH and DAIL have:

- Met with the Vermont Veteran's Home Administrator to discuss the provision of specialized services for this population
- Met with Designated Agency Executive Directors to engage any local long-term care facilities who would consider a specialized care unit for this population. Follow up meetings regarding mental health services and long-term care oversight issues are being planned;
- Met with a long-term care corporation who was a respondent to DMH's RFI for SRR services to discuss long-term care eligible populations across various AHS departments who present with specialized service needs.

DMH and DAIL will also be engaging with the Vermont Health Care Association to solicit their support in the planning process.

Program Characteristics

As with the current SRR, the focus of care of the permanent SRR Facility would continue to be the provision of psychiatric rehabilitation services and psychosocial treatment delivered in a positive behavioral support framework to assist individuals to engage in their own recovery and develop the necessary skills to move to less intensive services, and, ultimately, independent living. Program interventions would focus on connecting with the resident using positive behavioral supports designed to facilitate the individual's growth in skills needed for a return to the community. The focus of programming would include:

- Behavioral analysis and development of individualized treatment plans;
- Treatment of underlying mental illness;
- Life skills development;
- Psycho-social and psycho-educational programming focused on learning how to be safe and responsible citizens;

- Supporting and motivating residents (and their home communities) to engage in a recovery process;
- Discharge planning.

Program characteristics would also include the capacity to maintain a safe, secure environment regardless of the level of risk. The environment of care would permit separation of sub-groups so that all are safe and individuals with a history of traumatic experiences and victimization by others would not be further traumatized by contact with individuals prone to aggressive, assaultive behavior. Staff would be trained and credentialed to work with this population group.

As discussed previously, the proposed population to be served would include individuals who are at risk for exhibiting brief episodes of assaultive or self-injurious behavior, and thus the permanent SRR Facility would require a waiver of current TCR standards to include the potential need for and use of brief emergency involuntary interventions with residents served.

Financial Sustainability Considerations

AHS has examined a number of issues related to funding and financial sustainability of a permanent SRR Program. The temporary SRR facility in Middlesex is currently supported using Medicaid Global Commitment funds, and AHS is seeking to develop a program that can be supported using this same funding stream. As such, a number of factors must be taken into consideration.

Vermont currently relies on the flexibility it has under the Global Commitment managed care model to pay for services that are demonstrated to be cost effective alternatives to traditionally-covered services. These include services provided in an Institution for Mental Disease (IMD). Federal law provides that Federal Financial Participation (FFP) is not available for individuals between the ages of 21 and 65 who are residents of IMDs, which is a hospital, nursing facility or other institution of more than 16 beds that is primarily engaged in providing care and treatment of individuals with mental diseases.

Vermont currently relies on the flexibility it has under the Global Commitment managed care model to pay for services that are demonstrated to be cost effective alternatives to traditionally-covered services. Using this authority, program payments are included in the base for purposes of calculating the annual, actuarially-determined per-member per-month (PMPM) limits.

Vermont, under the above flexibility of the Global Commitment Demonstration, reimburses three facilities (licensed as Therapeutic Community Residences) for substance abuse treatment services. All three facilities operate more than 16 beds and are engaged in providing treatment for mental disease (which includes treatment for substance use and addiction for purposes of defining IMDs).

As part of the planning process for building the 25-bed Vermont Psychiatric Care Hospital (VPCH), in 2012 Vermont sought clarification from the Center for Medicaid and Medicare Services (CMS) regarding our authority to access Medicaid funding to support the new facility. In response to this request, CMS indicated that costs of services for individuals between

the ages of 21 and 65 residing in an IMD would not be included in the calculating the annual PMPM limits and that Vermont has authority under the Demonstration to fund IMD services by using its “managed care savings.” However, on May 26, 2015, CMS issued proposed revisions in regulations for Medicaid Managed Care plans that would allow for capitation payments to plans for persons receiving certain services in an IMD for less than 15 days per month.

While Vermont has asserted its authority under the managed care model to pay for Therapeutic Community Residence services for several years, the 2012 guidance received from CMS in response to Vermont’s inquiry suggests that managed care savings should be used to pay for all IMD services. Vermont has opted to continue to pay these facilities as cost effective alternatives while categorizing similar hospital-based payments as managed care investments.

Under either of these options, FFP is available under the current Section 1115 demonstration model to support these services. Starting in CY ’17, we will be operating under a new Agreement. We have just started negotiations with CMS and it is yet to be determined what changes in the current program may result, although it should be noted that we have requested a no-change extension. Should CMS propose specific actions regarding IMDs, we might reasonably propose something that aligns more closely with the 2015 proposed Medicaid Managed Care regulations. These regulations allow for up to 15 days payment eligible for FFP before we would have to turn to Managed Care Investment funds to receive FFP.

It is important to note that while Vermont’s ability to support VPCH using its “managed care savings” (also referred to as MCO Investment) has benefitted the state in a number of ways, AHS is seeking to avoid funding the permanent SRR facility as an MCO Investment.

The State’s Global Commitment waiver is capped by the PMPM limit. Any savings within the PMPM limit can be used for MCO Investments. To minimize the risk of not having enough savings to cover the MCO Investments, the State has tried to keep MCO Investments at 5-7% of total Global Commitment (GC) costs. In SFY’15, MCO Investment spending was at 8.79% of total GC costs, therefore above our target. Developing additional programming that would require MCO Investment funding would increase the percentage and risk of not having enough savings to cover the MCO Investments.

Management

Development of a state-run facility versus a collaborative initiative with interested providers, such as the initiatives for inpatient care following Act 79 with Rutland Regional Medical Center and the Brattleboro Retreat, still needs to be formulated and analyzed for long-term cost considerations.

Preliminary Recommendations

AHS has met with BGS representatives and included DOC, DAIL, and DCF participants in the preceding months with regard to potential populations to be served, compatibility of programming potentials, siting potentials, and funding mechanisms to be considered.

Presently, it appears most feasible for the development of a SRR facility that maximizes occupancy up to 16 beds that could address the needs of individuals who have mental illness and treatment needs for this setting drawing from eligible inpatients ready for transition from a hospital and eligible individuals from DOC into this level of care.

Under this proposed program, individuals would be under the care and custody of the DMH Commissioner and treatment programming would maximize opportunities for traditional Medicaid participation and minimize Global Commitment MCO Investment funding.

These preliminary recommendations continue to mirror the initial proposal put forward by both DMH and BGS in January 2015 with regard to projected construction costs and annualized operating costs. Acquisition costs as siting considerations are finalized and management costs, depending on state-run versus a public-private partnership configuration, still needs to be evaluated. It is recommended that a Request for Proposals be developed, identifying major programmatic components, further exploration of public-private partnership efficiencies, and with requirements for more detailed cost projections in order to determine overall cost benefits for both quality and service delivery to the population to be served. State Fiscal Year '18 budget development should then include requests for identified resources that will be necessary to initiate *Certificate of Need* or *Certificate of Approval* requirements and the project development and management coordination necessary to oversee the establishment of a permanent secure residential program.

Attachments:

Proposal for Secure Residential Facility [Act 179, Sec. 35: Appropriations Act, Sec E 314.2]:
Submitted to House Corrections and Institutions January 2015

AHS Letter to Peter Hood, Chair, Middlesex Select Board

APPENDIX III

Required Attachments

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

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

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

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

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

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

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

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

settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

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

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

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

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

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

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

Premises – Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

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

\$1,000,000.00 Each Occurrence
\$2,000,000.00 General Aggregate
\$1,000,000.00 Products/Completed Operations Aggregate
\$1,000,000.00 Personal & Advertising Injury

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

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

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

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

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

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

12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:

A. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient

will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

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

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

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

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

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

16. Taxes Due to the State:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. Certification Regarding Use of State Funds: In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.

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

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

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

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

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

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

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

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

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

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

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

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

(End of Standard Provisions)

Attachment C; Effective 7/1/2016

ATTACHMENT E BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its _____ **[Insert Name of AHS Department, Office or Division]** (“Covered Entity”) and **[Insert Name of Contractor/Grantee]** (“Business Associate”) as of _____ (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

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

The parties agree as follows:

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

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

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

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

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

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

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

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

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

2. Identification and Disclosure of Privacy and Security Offices. Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity’s contract/grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

3. Permitted and Required Uses/Disclosures of PHI.

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

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

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

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

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

6. Documenting and Reporting Breaches.

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

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

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

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

7. Mitigation and Corrective Action. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry

out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity. Business Associate shall require a Subcontractor to agree to these same terms and conditions.

8. Providing Notice of Breaches.

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

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

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

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

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

9. Agreements with Subcontractors. Business Associate shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use

or disclosure of PHI. Business Associate shall provide a copy of the Business Associate Agreement it enters into with a subcontractor to Covered Entity upon request. Business associate may not make any disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

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

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

12. Accounting of Disclosures. Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

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

14. Termination.

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

14.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate the contract or grant without liability or penalty if Covered Entity believes that cure is not

reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under the contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

15. Return/Destruction of PHI.

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

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

16. Penalties and Training. Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

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

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

17.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the

right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

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

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

18. Miscellaneous.

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

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

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

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

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

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

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

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

(Rev: 5/5/15)

ATTACHMENT F

AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.
2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org
3. **Medicaid Program Contractors:**

Inspection of Records: Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to:

Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and Inspect and audit any financial records of such Contractor or subcontractor.

Subcontracting for Medicaid Services: Having a subcontract does not terminate the Contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the Contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the Contractor or subcontractor's performance is inadequate. The Contractor agrees to make available upon request to the Agency of Human Services; the Department of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers.

Medicaid Notification of Termination Requirements: Any Contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Department of Vermont Health Access, Managed Care Organization enrollee notification requirements.

Encounter Data: Any Contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency.**

The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.

5. **Voter Registration.** When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

6. **Drug Free Workplace Act.** The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.

7. **Privacy and Security Standards.**

Protected Health Information: The Contractor 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 contract. The Contractor shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

Other Confidential Consumer Information: The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

Social Security numbers: The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911(c)(3)).

9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected

with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

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

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

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

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

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

12. **Computing and Communication:** The Contractor 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 Contractor as part of this agreement. Options include, but are not limited to:

1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

The State will not supply e-mail accounts to the Contractor.

13. **Lobbying.** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.
14. **Non-discrimination.** The Contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.

Attachment F - Revised AHS -12/10/10