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**Vermont Blueprint for Health**  
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**SEALED BID**

**REQUEST FOR PROPOSAL**

**PILOT PROTOTYPES FOR ALTERNATIVE SYSTEMATIC APPROACHES TO MANAGEMENT OF CHRONIC PAIN**

**ISSUE DATE:** **August 27, 2018**

**QUESTIONS DUE BY:** **September 12, 2018 4:30 PM**  
**RFP RESPONSES DUE BY:** **September 28, 2018 3:00 PM**

**PLEASE BE ADVISED THAT ALL NOTIFICATIONS, RELEASES, AND AMENDMENTS ASSOCIATED WITH THIS RFP WILL BE POSTED AT:**

[www.Vermontbidsystem.com](http://www.Vermontbidsystem.com)  
<http://blueprintforhealth.vermont.gov>

**THE STATE WILL MAKE NO ATTEMPT TO CONTACT INTERESTED PARTIES WITH UPDATED INFORMATION. IT IS THE RESPONSIBILITY OF EACH BIDDER TO PERIODICALLY CHECK THE ABOVE WEBPAGE FOR ANY AND ALL NOTIFICATIONS, RELEASES AND AMENDMENTS ASSOCIATED WITH THIS RFP.**

**STATE CONTACT:** **Rachel Green, Contract Administrator**  
**TELEPHONE:** **(802) 241-0234**  
**E-MAIL:** **Rachel.Green@vermont.gov**

## 1. OVERVIEW:

The Department of Vermont Health Access (herein after referred to as the “State”) seeks proposals to pilot test alternative approaches to the management of chronic pain. The pilots will test new services that provide coordinated specialists, complementary and alternative treatment modalities (CAMs), and ongoing enhanced primary care for Medicaid Members experiencing complex pain conditions for three months or longer duration. The pilots will help identify the services arrangements that:

- have the greatest impact on member outcomes (decreased impact of pain on psychological and physical function and increased self- efficacy)
- are feasibly replicable and scalable for statewide implementation
- have the most impact on reducing total cost of care to help assure funding sustainability over

Medicaid’s preference is for payment-supported pilots that will align across payers.

Proposals for the pilot programs will be restricted to currently enrolled Vermont Medicaid providers.

Proposals must include the following elements:

- Transdisciplinary Teams (for assessment, service plans, & consultation)
- Enhanced Primary Care Services (integration of CAMs, psychological, and other services).

Proposals may also include:

- Time limited, intensive clinic-based services.

The State is seeking to establish contracts with one or more organizations to pilot test integrated and comprehensive services for Medicaid members with complex pain conditions.

- 1.1. **CONTRACT PERIOD:** Contracts arising from this RFP will be for a period of up to 12 months with an option to renew for up to three additional twelve-month periods. The State anticipates the start date will be January 2, 2019.
- 1.2. **SINGLE POINT OF CONTACT:** All communications concerning this RFP are to be addressed in writing to the State Contact listed on the front page of this RFP. Actual or attempted contact with any other individual from the State concerning this RFP is strictly prohibited and may result in disqualification.
- 1.3. **BIDDERS’ CONFERENCE:** There will be no bidders’ conference.
- 1.4. **QUESTION AND ANSWER PERIOD:** Any vendor requiring clarification of any section of this RFP or wishing to comment or take exception to any requirements of the RFP must submit specific questions in writing no later than the deadline for question indicated on the first page of this RFP. Questions may be e-mailed to the point of contact on the front page of this RFP. Any comments, questions, or exceptions not raised in writing on or before the last day of the question period are waived. At the close of the question period a copy of all questions or comments and the State's responses will be posted on this web site [www.Vermontbidsystem.com](http://www.Vermontbidsystem.com) and <http://blueprintforhealth.vermont.gov>.
- 1.5. Every effort will be made to post this information as soon as possible after the question period ends, contingent on the number and complexity of the questions.

## 2. DETAILED REQUIREMENTS/DESIRED OUTCOMES:

### INTRODUCTION

Governor Phil Scott has demonstrated his commitment to confronting the opioid epidemic in Vermont. In his testimony before Congress, the Governor outlined Vermont's focus on the four legs of the stool: Prevention, Recovery, Treatment, and Enforcement and cited the federal government for its continued partnership with the State to identify and implement innovative models for addressing substance dependency at multiple points along the continuum. Specifically, the Vermont All-Payer Accountable Care Organization Model Agreement provides flexibility for the State of Vermont to include Medicare in potential solutions to this crisis and in return expects that the State will reduce the drug overdose deaths. The State has convened a working group of payers and clinical leaders to help design pilot prototypes for more integrated and comprehensive approaches to the management of pain. This Request for Proposals is for pilot tests of new service arrangements. These arrangements may include integration of complementary and alternative modalities (CAMs)<sup>1</sup>, alternative payment approaches, enhanced primary care services, specialty clinics and transdisciplinary<sup>2</sup> consulting teams. Pending the results of the pilot tests, the State may seek policy and appropriation authority to scale the approaches that prove most effective to state-wide implementation. Proposals for the pilot programs will be restricted to currently enrolled Vermont Medicaid providers.

### PURPOSE

The State seeks pilot program proposals from existing Vermont Medicaid service providers with which to develop alternative approaches to the management of chronic pain. The objective is to test different service arrangements that provide coordinated specialists, CAMs, and ongoing enhanced primary care for Medicaid Members experiencing complex pain conditions for three months or longer duration. Development and testing of pilot programs will help identify the services arrangements that:

- have the greatest impact on beneficiary outcomes (decreased impact of pain on psychological and physical function and increased self- efficacy)
- are feasibly replicable and scalable for statewide implementation
- have the most impact on reducing total cost of care to help assure funding sustainability over time

The State is seeking pilot proposals that can also align across payers.

### RATIONAL FOR TESTING NEW APPROACHES TO TREATMENT OF CHRONIC PAIN

*Current services and reimbursement favor other interventions over physical therapy, cognitive behavioral approaches and CAMs*

Current service provision, benefits, and reimbursement patterns favor medical, pharmacological, and surgical treatments for pain; however, there is growing evidence demonstrating the importance and effectiveness of mental health treatments<sup>3</sup>, exercise and physical reconditioning, nutrition, and complementary alternative modalities as first line interventions for pain management. The draft pilot framework outlined in this Request for Proposals is based on the hypothesis that non-pharmacological and non-surgical treatments for chronic pain can serve as the foundation for effective treatment. Figure 1 sets forth a hierarchy of interventions where the base of the pyramid represents the least expensive and least invasive therapeutic options, all of which have efficacy in addressing chronic pain. As one ascends

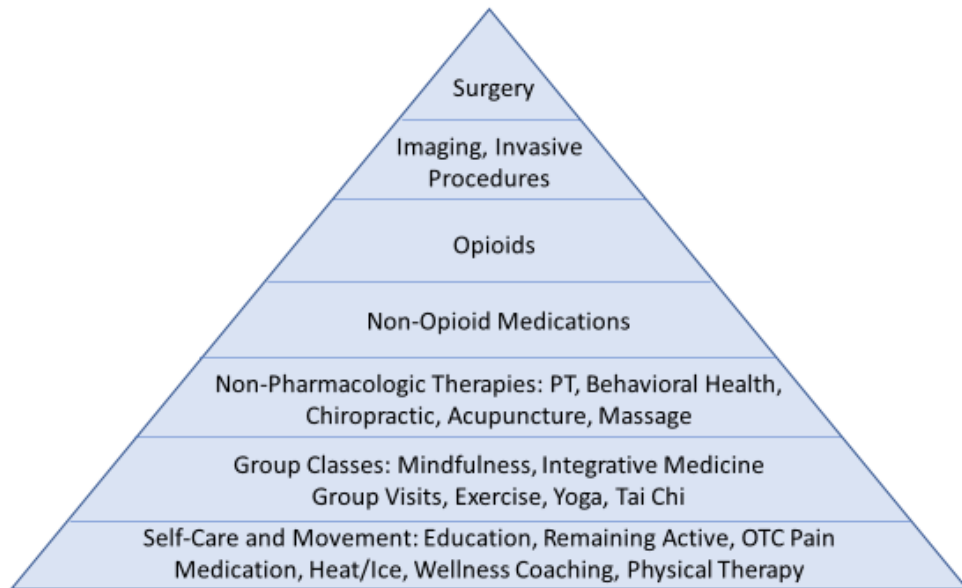
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<sup>1</sup> CAMs includes: chiropractic, acupuncture, yoga, massage, Tai Chi, Feldenkrais, mindfulness & meditation.

<sup>2</sup> In transdisciplinary teams "members create a shared team mission, benefit from role overlap, and have integrated responsibilities, training and leadership" (Swarm et al. 2016. Otis-Green et al. 2009). Transdisciplinary teams create a single plan of care reflecting the contribution of multiple disciplines.

<sup>3</sup> Psychological treatments include cognitive behavioral therapy (CBT) and trauma-specific treatments.

through the top half of the pyramid, the interventions increase in cost and sometimes carry risk of adverse outcomes to the patient – potentially without a corresponding increase in efficacy.



\*Modified graphic from Paula Gardiner, Boston Medical Center

Figure 1 –

While counseling and physical therapy are generally covered services, supports such as CAMs and exercise are not part of Vermont’s Medicaid health plan benefit. The result is that medical procedures and pharmacological treatment (especially with opioids) may be prescribed more and are relatively more accessible to Medicaid Members than approaches involving exercise and CAMs due to cost/reimbursement rates and ease of use. Medicaid Members may also experience greater access issues due to out-of-pocket costs for CAMs.

*CAMs, Nutrition and Exercise Programs, Physical Therapy, Psychological, and Primary Care Services are not coordinated in a way that would make them accessible and useful for members.*

Individuals struggling with chronic pain often have complex clinical needs involving overlapping physical health, mental health, and substance use conditions. However, psychological, medical, lifestyle, physical rehabilitation, and CAM services are rarely offered in a coordinated or integrated fashion. This lack of coordination can impact the success of each element of care and make it more difficult for patients to get the care they need.

Providers also face significant challenges and barriers to offering patients appropriate and successful care for chronic pain conditions. The care management and panel management services required to organize care across disciplines are not adequately reimbursed. The time needed for transdisciplinary teams to meet, formulate treatment plans, and monitor progress is also not sufficiently supported within payment systems.

*Other challenges to changing the current treatment paradigm exist.*

While the evidence is growing that mental health, physical conditioning, and CAMs are central to the successful restoration of functioning for patients with complex pain conditions, the practice of these disciplines may not always entail rigorous standards of care and consistency that health plans require. Finally, while there is consensus that changes in pain management practices are needed in the face of the current opioid epidemic, we may be limiting treatment options (such as longer-term use of opioids) more rapidly than we are adding new capacity for other effective approaches.

### *Claims analysis indicates that chronic pain impacts many Medicaid members*

An initial review of claims data indicates that as many as 10,000 Medicaid Members have been treated for pain-related conditions for two consecutive years (2015 and 2016). The average total health care expenditures for these members is quite high. Most importantly, the personal suffering those members with chronic pain experience is great and the toll that these conditions take on families and productivity is also significant.

### **EMERGING TREATMENT PARADIGM**

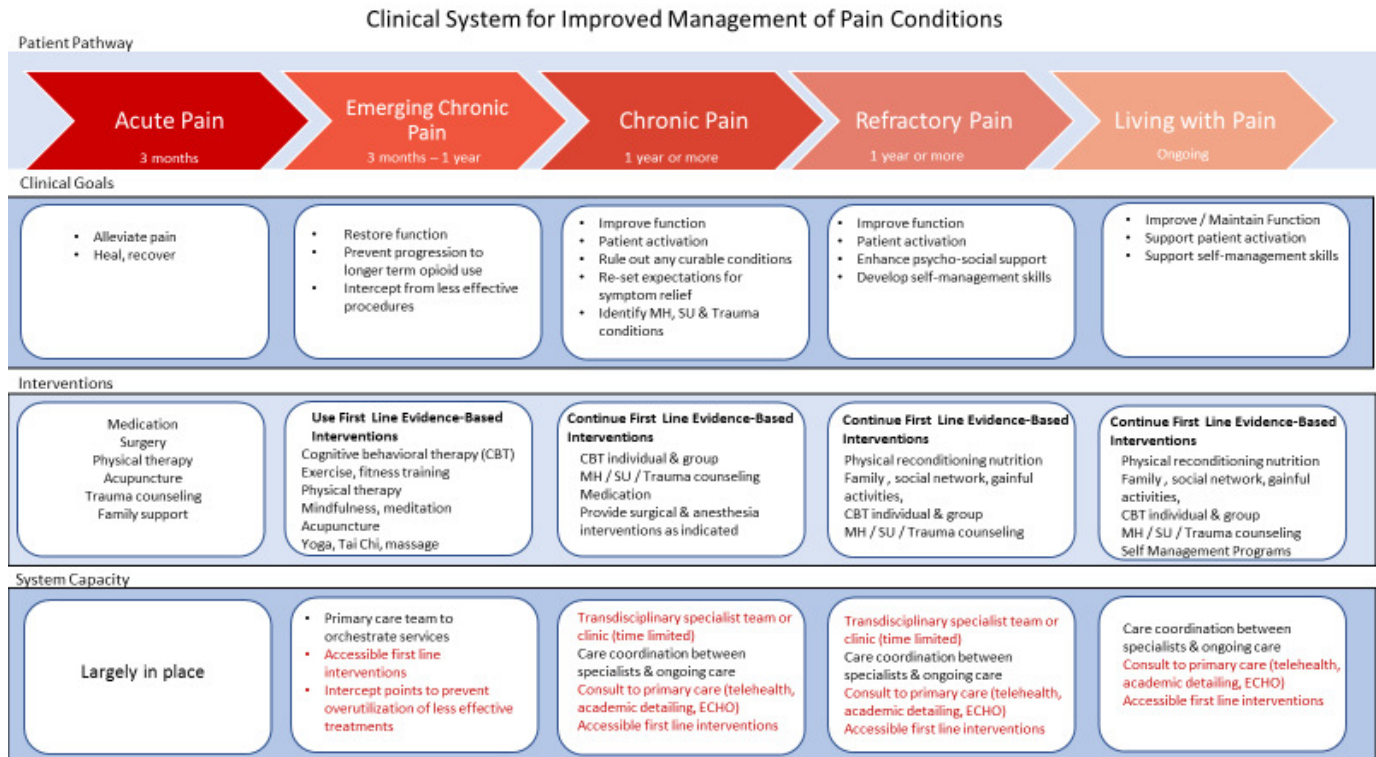
Transdisciplinary teams delivering integrated allopathic, psychological, and CAMs services is the emerging standard of care for the management of patients with complex conditions and chronic pain. As one of Vermont's largest payers' the Medicaid program can help stimulate the development of new health care system capacity to support interdisciplinary teams, clinics, and enhanced primary care services by issuing a RFP in order to test pilot program prototypes.

In order to effectively address clinical goals for management of pain conditions system capacity needs to be created for patients and their providers. This RFP for is for pilot programs to test approaches to the provision of:

- accessible first line interventions organized with primary care
- access to specialized time-limited transdisciplinary pain care
- develop system capacity that can effectively support patients living with pain, their family and support systems

Figure 2 below describes the clinical goals, interventions, and system capacity Medicaid seeks to support and/or enhance across the spectrum of pain conditions. The items in red font indicate system capacity that is generally not in place in Vermont. This RFP seeks pilot programs to test models for developing and integrating the missing system capacities.

Figure 2



## PILOT PROGRAM FRAMEWORK

The State seeks pilot program proposals to help test integrated service designs. Such service designs would incorporate integrated approaches to management of complex pain and behavioral health conditions. The State seeks proposals that employ these fundamental components:

- I. Convening a **transdisciplinary team** of specialists with expertise in medical, psychological and alternative approaches to the management of chronic pain (the team provides comprehensive assessment and service plan for patients and is available to consult to the Primary Care teams on complex cases)
- II. Implementing interdisciplinary intensive and time-limited **clinic-based services** (similar to a “HUB” in Vermont’s Medication Assisted Treatment model)
- III. Implementing **enhanced primary care services** providing ongoing medical, psychological, and CAMs services (similar to a “SPOKE” in Vermont’s Medication Assisted Treatment model)

**The State will consider proposals that include elements I (transdisciplinary team) and III (enhanced primary care services). Any bids proposing element II (intensive and time limited clinic services) must include the other elements. Proposals should offer service designs that can link all three components, test alternative payment models, and evaluate program outcomes. It is expected that more than one pilot program will be tested, reflecting local opportunities and allowing for evaluation of more than one approach.**

Additionally, we seek bids for service prototypes that also incorporate the following sub-components:

- I. Engagement of the family system – provision of education and support services for the patient’s primary support provider, when identified
- II A local advisory / planning committee structure consisting of individuals with lived experience, primary care providers, CAM providers, mental health clinicians, rehabilitation clinicians, self-management providers, and other stakeholders.

- III. Identification of and allowance for addressing barriers to care - including transportation.
- IV. Linkage with existing regional self-management programs for chronic pain
- V. Optimization of opiate medication management and safety for patients.
- VI. Information about the potential for the use of buprenorphine-naloxone for patients with chronic pain and opioid use disorder.

Finally, we seek pilot proposals that design strong linkages with addiction treatment resources and which test approaches to working with patients who are in active treatment for a substance use disorder.

As integrative and comprehensive services to address chronic pain are at a prototype phase in Vermont, any partners participating in pilots will work with the State to refine the program components, staffing, and workflows proposed. In addition, successful bidders for pilot programs will be expected to participate in a state-wide learning community to accelerate the spread of innovation and to support practice transformation.

### **DESIRED OUTCOMES & MEASUREMENT**

Pilot proposals must include measurement approaches to evaluate the effectiveness of the services being tested. Proposals should include feasible plans to collect measurements in the following areas:

- Impact of pain on psychological and physical function
- Patient identified desired outcomes
- Self-efficacy and sense of personal agency
- Patient and family pain management knowledge, skills, and attitudes
- Self/family employed management strategies
- Emergency Department, Surgical, Pharmaceutical, and Imaging Studies utilization
- Reduction in opioid use
- CAM utilization
- Completion rate of treatment programs
- Fidelity to selected interventions
- Care coordination
- Patient satisfaction
- CAM provider satisfaction
- Primary Care Provider satisfaction

### **PILOT PROPOSAL NARRATIVE**

This prototype framework was developed based on a series of key informant interviews, subject matter expert input, and a review of the literature. Information gathered to date indicates that it is important for each component to be interdisciplinary, including CAMs, and to incorporate approaches specialized for the management of pain and co-occurring conditions. This initial framework also reflects an approach that includes both intensive time-limited services and ongoing care to maintain wellness. Finally, the framework includes specialist teams available to provide ongoing consultation and mentoring to primary care teams. Ultimately the State is looking for programs that can be replicated and scaled to meet statewide need and that can be part of an integrated health system across all payers.

**Proposal narratives should follow the outline of sections I-VII below.**

#### **I. Identification of the Patient Cohort**

The State anticipates pilots serving between 25 – 100 patients. The proposed participants must be Medicaid members. They may also be dually eligible for Medicaid and Medicare.

**1. Patient Cohort**

Who will be served in the pilot program and what is the rationale for selecting these participants? Please include general demographics and clinical characteristics of pilot participants. What is understood about the current service utilization of these patients? Is there selection criteria (instruments) that you propose using? How will patients be recruited? Please describe the proposed approach to gaining patient consent for participating in treatment that includes consent to disclose substance use treatment information for care coordination and evaluation as well as collection of identifying information for evaluation conducted by Vermont Medicaid.

**II. Transdisciplinary Team(s) of Pain Specialists: Direct Services – Assessment, Care Planning, and Ongoing Evaluation (Required)**

**1. Team Composition**

What is the proposed composition of the transdisciplinary team and why? How will CAM providers be represented? Are there some team members that could be considered core to the transdisciplinary team<sup>4</sup>, and others which may be considered part of wider multidisciplinary team<sup>5</sup>? How each might contribute to a single care plan?

**2. Team Role in the Pilot System of Care**

The Pilot Program Framework envisions at least three potential roles for the team(s):

- consultation & support to primary care as requested
- assessment and development of individual plans of care for patients
- provision of direct services

What role(s) will the team play in the proposed pilot program? How will the interdisciplinary pain specialist team relate to referring primary care providers?

**3. Team Staffing and Costs**

Describe the proposed team staffing (percentage of effort for the pilot program) and costs using the table below. Please describe what team services are currently billable to Medicaid and what team services would require additional funding. What administrative arrangements are being proposed to support the convening of this type of team?

Position	% FTE for pilot	Annual Salary	Annual Benefits	Annual Total	Medicaid billable hours per week	Medicaid non-billable hours per week	Team member location

<sup>4</sup> Transdisciplinary teams are diverse health professionals in teams that may also include other non-professional staff that work together in a coordinated fashion to share expertise, knowledge, and skills to impact on patient care through a combined care plan.

<sup>5</sup> Multidisciplinary teams are considered to be diverse health professionals contributing to patient care, but who may work on separate care plans and discipline-specific goals.



#### 4. Referrals & Patient Assessment

Please describe how referrals to the transdisciplinary team will be made for the pilot program. Are there specific referral criteria? What is entailed in the interdisciplinary assessment process you propose? What domains of assessment are proposed and how are these evaluated? Identify any standardized assessment instruments that will be employed. How long does an assessment take? How can pilots support sharing of patient records to facilitate integrated care?

#### 5. Individual Plan of Care

Please describe how the plan of care will be developed. List the potential modalities that could be considered and describe how the care will be individualized for each patient (modality, frequency, duration). Please describe how the program will provide and track education for the patient and their primary supports/family system. How will the team set targets for patient-level outcomes and goals and how will these be measures? Please provide a few sample treatment plans.

#### 6. Payment Approach

There are a variety of payment options that could be employed by the State to support the costs of the pilot programs, but the State is primarily focused on using the existing fee-for-service combined with a single payment for services related to transdisciplinary team management of chronic pain for an individual over a therapeutically appropriate period of time. This could include a single payment for services across multiple organizations, multiple providers, and/or multiple settings.

*Considering the team composition and the proposed roles/functions of the team, please indicate the service(s), the cost estimated of the service(s), reimbursement rate (where applicable), costs and requirements for delivery (e.g. E.H.R. modifications) and proposed overall budget for service delivery averaged per patient and for the entire cohort of Medicaid Members, itemized respectively.*

	Unit Cost	Targeted number of patients in cohort	Total Cost for cohort
Interdisciplinary assessment			
Development of individual plan of care			

#### 7. Transdisciplinary Team(s) of Pain Specialists: Consultation Services (Required)

A key goal of the pilot program is to test approaches that link specialist teams and services with primary care and complementary alternative modality (CAMs) providers. Various approaches include academic detailing, telehealth consults, travelling clinics, or Project ECHO<sup>6</sup>. Describe the approach proposed in your pilot and the rationale for selecting it.

What costs do you propose for consultation services and what reimbursement approach would you recommend employing?

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<sup>6</sup> Project ECHO allows physicians, nurse practitioners, and other clinicians to jointly manage complex illness and promotes the use of best practices in care, while enabling patients to receive treatment in their home communities.  
<https://www.rwjf.org/en/how-we-work/grants-explorer/featured-programs/project-echo.html>

### III. Comprehensive Integrated Clinic Services – Interventions (Optional)

The State’s research thus far highlights the importance of both group and individual interventions and favors the use of a range of modalities and specialties. Some subject matter experts also reported that specialty, clinic-based interventions providing comprehensive care on a time-limited basis to restore or improve functioning would be central to a comprehensive system of care. In this approach, the clinic, which could serve as the “Hub” housing the interdisciplinary team of pain specialists described earlier, would provide time limited and intensive services to a cohort of patients referred by primary care (“spokes”).

It is not clear if such a clinic model can be supported outside of larger population centers or by smaller hospital or community providers. Likely, this concentration of clinic-based services requires an organizational host to provide facilities, although more geographically dispersed arrangements could be developed. If you are proposing to pilot test a clinic approach, please describe it.

#### 1. Program Description

Please provide a description of the comprehensive interdisciplinary intervention program. Include modalities offered, sample schedule for a patient, number of patients seen at any given time, and timeframe for patients to move through the program. Please identify the primary care practices that will collaborate with the clinic in the pilot. Please also describe the referral and communication processes, including outcome measurement that will be employed to support coordinated care. Please identify how progress will be measured, what discharge criteria will be used and how these will be measured.

#### 2. Staffing Plan

Please provide a staffing plan with % FTE effort, salary, and benefits costs for program staff (if not previously detailed by Team in section II). Please consider which services are currently billable and which require pilot funding to support. Describe the anticipated mix between currently billable and pilot funding sources to support the team you propose. Please indicate where they will be based and describe in an accompanying narrative any administrative arrangements that support the convening of the team.

Position	% FTE	Annual Salary	Annual Benefits	Annual Total	Medicaid billable hours per week	Medicaid non-billable hours per week	Team member location

#### 3. Payment Approach

A variety of payment options could be employed for a pilot clinic program but the State favors developing a bundled payment (episode of care or other approach) for those services provided in clinics for an individual over a therapeutically appropriate period. This could include a single payment for services provided by partnering organizations and providers.

The State will also evaluate the proposal on its financial arrangements. Considering the team composition and the proposed roles/functions of the team, please indicate the service(s), the cost estimated of the service(s), reimbursement rate (where applicable), costs and requirements for delivery (e.g. E.H.R. modifications), and proposed overall budget for service delivery averaged per patient and for

the entire cohort of Medicaid Members, itemized respectively. Please describe in a narrative any assumptions used to establish cost estimates for each activity.

*Please indicate the service(s), the cost estimated of the service(s), reimbursement rate (where applicable), costs and requirements for delivery (e.g. E.H.R. modifications) and proposed overall budget for service delivery averaged per patient and for the entire cohort of Medicaid Members, itemized respectively. Please describe in a narrative any assumptions used to establish cost estimates for each activity.*

Service	Unit Cost	Targeted number of patients in cohort	Total Cost for cohort

**IV. Enhanced Primary Care Services (Required)**

As with other chronic conditions Primary Care provides a key role in the ongoing management of chronic pain. The Blueprint for Health Patient-Centered Medical Homes and Community Health Teams are well positioned to provide coordinated multidisciplinary services. The State believes that primary care practices can help support the provision of CAM services by engaging local practitioners, providing “warm hand offs”, and coordinating care. In addition, many primary care practices are positioned to either directly provide or coordinate mental health and substance use treatment. Please describe how primary care practices will engage in coordinated care with the Transdisciplinary Team, Comprehensive Integrated Clinics (if proposed) and how they will organize the provision of CAMS and behavioral health on behalf of their patients with chronic pain conditions.

**1. Program Description**

Provide a description of the program enhancements to be pilot tested. Such enhancements may include interventions that could be offered in individual and group modalities.

The prototype program framework envisions interdisciplinary teams organizing care for a panel of patients with chronic pain. Key elements may include:

- Nursing care coordination
- Cognitive Behavioral Therapy and Trauma-Specific Treatments
- Low barrier access to CAMS
- Medical management
- Methods that will be used to uniformly collect data about each patient’s treatment (including utilization of CAMs)
- Outcome measurement

Describe the elements proposed in your pilot. Address how a range of CAMS and other support services will be made available to patients. Finally discuss how patient choice and preference will be accommodated in the pilot program.

Please also describe the discharge criteria you propose to pilot test.

**2. Patient Activation and Education**

The State believes that one of the most challenging and important aspects of management of chronic pain is patient activation. Patient suffering is profound and is often as impacted by loss of control, sense of hopelessness, and emotional difficulties as much as due to anatomical conditions. Instilling hope, a sense of agency for one’s own health and well-being and developing alternative coping skills are described as perhaps the most important aspect of this work.

Please describe the approaches and methods that will be pilot tested to help empower and activate patients to develop self-care and coping skills. In addition, please propose approaches to help activate patients’ support network/family systems in coping successfully with the pain loved ones’ experience.

**3. Staffing Plan**

As before in this document, the State seeks proposals to pilot staffing plans and costs for primary care enhancements. Please consider which services are currently billable and which require pilot funding to support. Describe the anticipated mix between currently billable and pilot funding sources to support the team you propose. Please indicate where they will be based and describe in an accompanying narrative any administrative arrangements that support the coordination of care between Primary Care, CAMS providers, psychological services and any others proposed.

In the funding proposal, please consider which services may be currently billable and which may require new funding sources to support the primary care enhancements that may be proposed by pilots.

Position	% FTE	Annual Salary	Annual Benefits	Annual Total	Medicaid billable hours per week	Medicaid non-billable hours per week	Team member location

**4. Payment Approach**

A variety of payment options could be employed for enhanced primary care services but the State favors developing a bundled payment (episode of care or other approach) for those service enhancements organized by primary care for an individual over a therapeutically appropriate period. This could include a single payment for services provided by partnering organizations and providers.

The State will also evaluate the proposal on its financial arrangements. Considering the range of enhanced services proposed in the pilot, please indicate the service(s), the cost estimated of the service(s), reimbursement rate (where applicable), costs and requirements for delivery (e.g. E.H.R. modifications), and proposed overall budget for service delivery averaged per patient and for the entire cohort of Medicaid Members, itemized respectively. Please describe in a narrative any assumptions used to establish cost estimates for each activity.

Service	Unit Cost	Targeted number of patients in cohort	Total Cost for cohort

**V. Pilot Evaluation Plan**

Propose a plan to evaluate your pilot. Identify any standardized assessment you plan to employ. Discuss evaluation timeframe and identify the specific measureable patient and system outcomes that could be achieved through the pilot. Please provide information you have about the current, major cost drivers for the patient cohort you propose to treat and what cost offsets that may potentially be realized because of the alternative treatment services proposed.

In addition, please recommend any state level metrics that the State could collect using administrative (claims) data. The State does plan to track the pilot patient cohort over time and, consequently will require patient-level identifying information. Please describe the patient consent process and identify any human subject review procedures you anticipate undertaking should the State fund the proposed pilot.

**VI. Learning Health System**

The State plans to convene a series of targeted learning sessions to support the pilot programs. These will likely employ both in-person and web-ex events. The goals of the sessions are to provide national, best practice information to the pilot programs and to rapidly identify and disseminate learnings among the pilot programs. Using a quality improvement framework, a community of learners will be created to share experiences.

Please identify any topical areas you would find helpful to support the proposed pilot and experts you recommend be included as faculty for learning sessions.

Please also identify the team members you commit to attend the learning sessions.

**3. GENERAL REQUIREMENTS:**

**3.1. PRICING:** Bidders must price the terms of this solicitation at their best pricing. Any and all costs that Bidder wishes the State to consider must be submitted for consideration.

**3.2. Retainage.** In the discretion of the State, a contract resulting from this RFP may provide that the State withhold a percentage of the total amount payable for some or all deliverables, such retainage to be payable upon satisfactory completion and State acceptance in accordance with the terms and conditions of the contract.

**3.3 BEST AND FINAL OFFER:**

**3.3.1 Best and Final Offer (BAFO).** At any time after submission of Responses and prior to the final selection of Bidder(s) for Contract negotiation or execution, the State may invite Bidder(s) to provide a BAFO.

**3.3.2** The state reserves the right to request BAFOs from only those Bidders that meet the minimum qualification requirements and/or have not been eliminated from consideration during the evaluation process.

**3.3.3 Evaluation of Responses and Selection of Bidder(s).** The State shall have the authority to evaluate Responses and select the Bidder(s) as may be determined to be in the best interest of the State and consistent with the goals and performance requirements outlined in this RFP.

**3.4 WORKER CLASSIFICATION COMPLIANCE REQUIREMENTS:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), Bidders must comply with the following provisions and requirements.

**3.4.1 Self Reporting:** For bid amounts exceeding \$250,000.00, Bidder shall complete the appropriate section in the attached Certificate of Compliance for purposes of self-reporting information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers. The State is requiring information on any violations that occurred in the previous 12 months.

**3.4.2 Subcontractor Reporting:** For bid amounts exceeding \$250,000.00, Bidders are hereby notified that upon award of contract, and prior to contract execution, the State shall be provided with 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). This requirement does not apply to subcontractors providing supplies only and no labor to the overall contract or project. This list MUST be updated and provided to the State as additional subcontractors are hired. A sample form is available online at <http://bgs.vermont.gov/purchasing-contracting/forms>. **The subcontractor reporting form is not required to be submitted with the bid response.**

**3.5 EXECUTIVE ORDER 05-16: CLIMATE CHANGE CONSIDERATIONS IN STATE PROCUREMENTS:**

For bid amounts exceeding \$25,000.00 Bidders are requested to complete the Climate Change Considerations in State Procurements Certification, which is included in the Certificate of Compliance for this RFP.

After consideration of all relevant factors, a bidder that demonstrates business practices that promote clean energy and address climate change as identified in the Certification, shall be given favorable consideration in the competitive bidding process. Such favorable consideration shall be consistent with and not supersede any preference given to resident bidders of the State and/or products raised or manufactured in the State, as explained in the Method of Award section. But, such favorable consideration shall not be employed if prohibited by law or other relevant authority or agreement.

**3.6 METHOD OF AWARD:** Awards will be made in the best interest of the State. The State may award one or more contracts and reserves the right to make additional awards to other compliant bidders at any time if such award is deemed to be in the best interest of the State. All other considerations being equal, preference will be given first to resident bidders of the state and/or to products raised or manufactured in the state, and then to bidders who have practices that promote clean energy and address climate change, as identified in the applicable Certificate of Compliance.

**3.6.1 Evaluation Criteria:** Consideration shall be given to the Bidder's project approach and methodology, qualifications and experience, ability to provide the services within the defined timeline, cost, and/or success in completing similar projects, as applicable, and to the extent specified below:

The following evaluation criteria will be used to select pilot proposals.

Proposals for the pilot programs will be restricted to currently enrolled Vermont Medicaid providers.

Proposals must include the following framework elements:

- Transdisciplinary Teams (for assessment, service plans, & consultation)
- Enhanced Primary Care Services (integration of CAMs, psychological, and other services).

Proposals may also include framework element:

- Time limited, intensive clinic-based services.

The total score for proposals with the clinic option will be 130. Total score for proposals without the clinic option will be 100.

<p><b>I. Identification of the Patient Cohort</b></p> <p>a. Description of Patient Cohort</p>
<p><b>II. Interdisciplinary Team(s) of Pain Specialists: Direct Services – Assessment, Care Planning, and Ongoing Consultation (Required)</b></p> <p>a. Description of Team Role</p> <p>b. Cost/Payment Approach</p> <p>c. Referrals</p> <p>d. Individual Plan of Care development approach</p> <p>e. Interdisciplinary Team of Pain Specialist cost reimbursement approach</p>
<p><b>III. Comprehensive Integrated Clinic Services – Interventions (Optional)</b></p> <p>a. Program description</p> <p>b. Staffing plan</p> <p>c. Description of payment approach</p>
<p><b>IV. Enhanced Primary Care Services</b></p> <p>a. Program description</p> <p>b. Patient Activation and Education approach and methodology</p> <p>c. Staffing plan</p> <p>d. Payment approach</p>
<p><b>V. Pilot Evaluation Plan</b></p> <p>a. Evaluation plan description</p>
<p><b>VI. Learning Health System</b></p> <p>a. Description of proposals for sessions</p>

**3.7 STATEMENT OF RIGHTS:** The State of Vermont reserves the right to obtain clarification or additional information necessary to properly evaluate a proposal. Vendors may be asked to give a verbal presentation of their proposal after submission. Failure of vendor to respond to a request for additional information or clarification could result in rejection of that vendor's proposal. To secure a project that is deemed to be in the best interest of the State, the State reserves the right to accept or reject any and all bids, in whole or in part, with or without cause,

and to waive technicalities in submissions. The State also reserves the right to make purchases outside of the awarded contracts where it is deemed in the best interest of the State.

**3.8 CONTRACT TERMS:** The selected bidder(s) will be expected to sign a contract with the State, including the Standard Contract Form and Attachment C, E, and F as attached to this RFP for reference. The contract will obligate the bidder to provide the services and/or products identified in its bid, at the prices listed.

**3.8.1 PAYMENT TERMS:** All invoices are to be rendered by the Contractor on the vendor's standard billhead and forwarded directly to the institution or agency ordering materials or services and shall specify the address to which payments will be sent. Payment terms are Net 30 days from receipt of an error-free invoice with all applicable supporting documentation. Percentage discounts may be offered for prompt payments of invoices; however, such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.

If an alternate payment methods are required, requested payment terms must be clearly outlined in the bidder's response.

**4 CONTENT AND FORMAT OF RESPONSES:** The content and format requirements listed below are the minimum requirements for State evaluation. These requirements are not intended to limit the content of a Bidder's proposal. Bidders may include additional information or offer alternative solutions for the State's consideration. However, the State discourages overly lengthy and costly proposals, and Bidders are advised to include only such information in their response as may be relevant to the requirements of this RFP.

**4.1 Document Submission:**

**4.1.1** Submit an electronic copy to: Rachel.Green@vermont.gov.

**4.1.2** The bid should include all required components as described in the RFP.

**4.2 COVER LETTER:**

**4.2.1 Confidentiality.** To the extent your bid contains information you consider to be proprietary and confidential, you must comply with the following requirements concerning the contents of your cover letter and the submission of a redacted copy of your bid (or affected portions thereof).

The successful response will become part of the contract file and will become a matter of public record, as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under the State's Public Records Act, 1 V.S.A. § 315 et seq., the bidder shall submit a cover letter that clearly identifies each page or section of the response that it believes is proprietary and confidential. The bidder shall also provide in their cover letter a written explanation **for each marked section** explaining why such material should be considered exempt from public disclosure in the event of a public records request, pursuant to 1 V.S.A. § 317(c), including the prospective harm to the competitive position of the bidder if the identified material were to be released. Additionally, the bidder must include a redacted copy of its response for portions that are considered proprietary and confidential. Redactions must be limited so that the reviewer may understand the nature of the information being withheld. It is typically inappropriate to redact entire pages, or to redact the titles/captions of tables and figures. Under no circumstances can the entire response be marked confidential, and the State reserves the right to disqualify responses so marked.

**4.2.2 Exceptions to Terms and Conditions.** If the bidder wishes to propose an exception to any terms and conditions set forth in the Standard Contract Form and its attachments, such exceptions must be included in the cover letter to the RFP response. Failure to note exceptions when responding to the RFP will be deemed to be acceptance of the State



contract terms and conditions. If exceptions are not noted in the response to this RFP but raised during contract negotiations, the State reserves the right to cancel the negotiation if deemed to be in the best interests of the State. Note that exceptions to contract terms may cause rejection of the proposal.

**4.3 BACKGROUND AND EXPERIENCE.** Provide details concerning the form of business organization, company size and resources; describe particular experience relevant to the proposed project, and list all current or past State projects.

If a Bidder intends to use subcontractors, the Bidder must identify in the proposal the names of the subcontractors, the portions of the work the subcontractors will perform, and address the background and experience of the subcontractor(s) ability to perform the work, as above.

**4.4 REFERENCES.** Provide the names, addresses, and phone numbers of at least three companies with whom you have transacted similar business in the last 12 months. You must include contact names who can talk knowledgeably about performance.

**4.5 REPORTING REQUIREMENTS:** Provide a sample of any reporting documentation that may be applicable to the Detailed Requirements of this RFP.

**4.6 PRICING:** Bidders shall submit their pricing information in the Price Schedule attached to the RFP. Bidders may be required to submit pricing information separate from their bid package if specifically required above.

**4.7 CERTIFICATE OF COMPLIANCE:** This form must be completed and submitted as part of the response for the proposal to be considered valid.

## **5 SUBMISSION INSTRUCTIONS:**

**5.1 CLOSING DATE:** Bids must be received by the due date and at the location specified on the front page of this RFP.

**5.2** The bid opening will be held at **280 State Drive, First Floor, Waterbury, VT** and is open to the public.

**5.3 SECURITY PROCEDURES: Please be advised extra time will be needed when visiting 280 State Drive. All individuals visiting 280 State Drive must present a valid government issued photo ID when entering the facility.**

**5.4 SEALED BID INSTRUCTIONS:** All bids must be sealed and must be addressed to the State of Vermont, Department of Vermont Health Access **280 State Drive, First Floor, Waterbury, VT 05671.**

**5.4.1** Bids not in possession of the Office of Purchasing & Contracting at the time of the bid opening will not be considered.

**5.4.2** Office of Purchasing & Contracting may, for cause, change the date and/or time of bid openings or issue an addendum. If a change is made, the State will make a reasonable effort to inform all bidders by posting at: [Vermontbidregistry.com](http://Vermontbidregistry.com) and <http://blueprintforhealth.vermont.gov>

**5.4.3** All bids will be publicly opened. Typically, the Office of Purchasing & Contracting will open the bid, read the name and address of the bidder, and read the bid amount. However, the Office of Purchasing & Contracting reserves the right to limit the information disclosed at the bid opening to the name and address of the bidder when, in its sole discretion, the Office of Purchasing & Contracting determines that the nature, type, or size of the bid is such that the Office of Purchasing & Contracting cannot immediately (at the opening) determine that the

bids are in compliance with the RFP. As such, there will be cases in which the bid amount will not be read at the bid opening. Bid openings are open to members of the public. Bid results are a public record however, the bid results are exempt from disclosure to the public until the award has been made and the contract is executed.

**6 ATTACHMENTS:**

**6.1** Attachment C: Standard State Contract Provisions

**6.2** Attachment E: Business Associate Agreement

**6.3** Attachment F: Agency of Human Services' Customary Contract/Grant Provisions

**6.4** Certificate of Compliance

**6.5** Price Sheet Sample

**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS  
REVISED DECEMBER 15, 2017**

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

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

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

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

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

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

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

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

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

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

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

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

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

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

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

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

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

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

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

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

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent

jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

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

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

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

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

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

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

- A.** Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B.** Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C.** Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D.** Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

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

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

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

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

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

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

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

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

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

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

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

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

**25. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance

illegal or impossible (excluding strikes or lock-outs) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

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

**27. Termination:**

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

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

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

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

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

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part

200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

### **32. Requirements Pertaining Only to State-Funded Grants:**

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)



## 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 18 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 of HHS in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

**14. Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all 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 19.8.

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.** Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

**17. Training.** Business Associate understands that it is its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, Business Associate shall participate in AHS training regarding the use, confidentiality, and security of PHI, however, participation in such training shall not supplant nor relieve Business Associate of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

**18. 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.

18.1 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.

18.2 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.

18.3 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.

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

**19. Miscellaneous.**

19.1 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.

19.2 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.

19.3 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.

19.4 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.

19.5 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.

19.6 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.

19.7 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.

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

Rev: 7/7/17

**Attachment F**  
**AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT/GRANT PROVISIONS**

1. **Definitions:** For purposes of this Attachment F, the term “Agreement” shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term “Party” when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term “Party” shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term “Party” as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term “Party” shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.
2. **Agency of Human Services:** The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.
3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont’s Medicaid program and Vermont’s Global Commitment to Health Waiver*):

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

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

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

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

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

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

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

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

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

5. **Non-Discrimination:**

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

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

Party further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or



written translation or interpretive services, such individuals cannot be required to pay for such services.

6. **Employees and Independent Contractors:**

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

7. **Data Protection and Privacy:**

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

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

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

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

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

8. **Abuse and Neglect of Children and Vulnerable Adults:**

**Abuse Registry.** Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or

supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact though (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

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

9. **Information Technology Systems:**

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

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

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

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

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

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

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

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

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

#### 10. **Other Provisions:**

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

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

**2-1-1 Database:** If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or

contact information as well as accurate and up to date information to its database as requested. The “Inclusion/Exclusion” policy can be found at [www.vermont211.org](http://www.vermont211.org).

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

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

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

AHS ATT. F 5/16/2018

**CERTIFICATE OF COMPLIANCE**

**For a bid to be considered valid, this form must be completed in its entirety, executed by a duly authorized representative of the bidder, and submitted as part of the response to the proposal.**

- A. **NON-COLLUSION:** Bidder hereby certifies that the prices quoted have been arrived at without collusion and that no prior information concerning these prices has been received from or given to a competitive company. If there is sufficient evidence to warrant investigation of the bid/contract process by the Office of the Attorney General, bidder understands that this paragraph might be used as a basis for litigation.
- B. **CONTRACT TERMS:** Bidder hereby acknowledges that is has read, understands and agrees to the terms of this RFP, including Attachment C: Standard State Contract Provisions, and any other contract attachments included with this RFP.

C. **FORM OF PAYMENT:** Does Bidder accept the Visa Purchasing Card as a form of payment?  
\_\_\_\_ Yes \_\_\_\_ No

D. **WORKER CLASSIFICATION COMPLIANCE REQUIREMENT:** In accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54), the following provisions and requirements apply to Bidder when the amount of its bid exceeds \$250,000.00.

**Self-Reporting.** Bidder hereby self-reports the following information relating to past violations, convictions, suspensions, and any other information related to past performance relative to coding and classification of workers, that occurred in the previous 12 months.

<b>Summary of Detailed Information</b>	<b>Date of Notification</b>	<b>Outcome</b>

**Subcontractor Reporting.** Bidder hereby acknowledges and agrees that if it is a successful bidder, prior to execution of any contract resulting from this RFP, Bidder will 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), and Bidder will provide any update of such list to the State as additional subcontractors are hired. Bidder further acknowledges and agrees that the failure to submit subcontractor reporting in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54) will constitute non-compliance and may result in cancellation of contract and/or restriction from bidding on future state contracts.

**E. Executive Order 05 – 16: Climate Change Considerations in State Procurements Certification**

**Bidder certifies to the following (Bidder may attach any desired explanation or substantiation. Please also note that Bidder may be asked to provide documentation for any applicable claims):**

1. Bidder owns, leases or utilizes, for business purposes, space that has received:
  - Energy Star® Certification
  - LEED®, Green Globes®, or Living Buildings Challenge<sup>SM</sup> Certification
  - Other internationally recognized building certification:
  
2. Bidder has received incentives or rebates from an Energy Efficiency Utility or Energy Efficiency Program in the last five years for energy efficient improvements made at bidder's place of business. Please explain:
  
3. Please Check all that apply:
  - Bidder can claim on-site renewable power or anaerobic-digester power ("cow-power"). Or bidder consumes renewable electricity through voluntary purchase or offset, provided no such claimed power can be double-claimed by another party.
  - Bidder uses renewable biomass or bio-fuel for the purposes of thermal (heat) energy at its place of business.
  - Bidder's heating system has modern, high-efficiency units (boilers, furnaces, stoves, etc.), having reduced emissions of particulate matter and other air pollutants.
  - Bidder tracks its energy consumption and harmful greenhouse gas emissions. What tool is used to do this? \_\_\_\_\_
  - Bidder promotes the use of plug-in electric vehicles by providing electric vehicle charging, electric fleet vehicles, preferred parking, designated parking, purchase or lease incentives, etc.
  - Bidder offers employees an option for a fossil fuel divestment retirement account.
  - Bidder offers products or services that reduce waste, conserve water, or promote energy efficiency and conservation. Please explain:
  
4. Please list any additional practices that promote clean energy and take action to address climate change:

**F. Acknowledge receipt of the following Addenda:**

Addendum No.: \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No.: \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No.: \_\_\_\_\_ Dated: \_\_\_\_\_

Bidder Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_ Fax Number: \_\_\_\_\_

\_\_\_\_\_ Telephone: \_\_\_\_\_

\_\_\_\_\_ E-Mail: \_\_\_\_\_

By: \_\_\_\_\_ Name: \_\_\_\_\_

Signature of Bidder (or Representative)

(Type or Print)

**END OF CERTIFICATE OF COMPLIANCE**

**PRICE SCHEDULE (SAMPLE ONLY – MODIFY ACCORDINGLY)**

INSTRUCTION TO AGENCY/DEPT: USE THIS PRICE SCHEDULE TO INSTRUCT BIDDERS AS TO THE FORMAT AND CONTENT FOR SUBMISSION OF PRICING INFORMATION THAT WILL ENABLE A FAIR AND UNIFORM COMPARISON OF PRICING FOR EACH AND EVERY BID.

**A. REMOVE IF NOT APPLICABLE: Fixed Price Deliverables:**

Deliverable Description	Fixed Price
Deliverable A:	\$
Deliverable B:	\$
Etc.	\$
Total Project Cost	\$

**B. REMOVE IF NOT APPLICABLE: Hourly Labor Rates:**

Service Category/Title of Positions	Hourly Rate
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$

Name of Bidder: \_\_\_\_\_

Signature of Bidder: \_\_\_\_\_

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