

State of Vermont

Buildings and General Services
Office of Purchasing & Contracting
109 State St
Montpelier VT 05609-3001
United States

CONTRACT



Vendor ID 0000352392
Telelanguage Inc.
514 SW 6th Ave 4th Fl
Portland OR 97204
United States

Contract ID 000000000000000000031184	Page 1 of 3
Contract Dates 05/01/2016 to 04/30/2020	Origin CPS
Description: CPS Translation and Interp	Contract Maximum \$300,000.00
Buyer Name Stephen A Fazekas	Buyer Phone Approved

Phone #:

Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
1		Written Translation and Verbal Interpretation	EA	0.01000	0.00	0.00

CONTRACT TERMS AND ADDITIONAL INFORMATION

STATE OF VERMONT Contract # 31184
STANDARD CONTRACT FOR SERVICES

1. Parties. This is a contract for services between the State of Vermont, (hereafter called "State"), and Telelanguage Inc., with their principal place of business in Portland, OR,, (hereafter called "Contractor"). Contractor's form of business organization is a Corporation . It is the contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter. The subject matter of this contract is services generally on the subject of Translation & Interpretation Services. Detailed services to be provided by the contractor are described in Attachment A.

3. Maximum Amount. In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$100,000.00.

4. Contract Term. The period of contractor's performance shall begin on May 1, 2016 and end on April 30, 2018, with the option for two 1 year renewals.

5. Prior Approvals. If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

- Approval by the Attorney General's Office is required.
- Approval by the Secretary of Administration is not required.
- Approval by the CIO/Commissioner DII is not required.

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

7. Cancellation. This contract may be canceled by either party by giving written notice at least 90 days in advance.

8. Attachments. This contract consists of 14 pages including the following attachments which are incorporated herein:

- Attachment A - (Specifications of Work to be Performed)
- Attachment B - (Payment Provisions)
- Attachment C - (Standard State Provisions for Contracts and Grants)
- Attachment E - (BUSINESS ASSOCIATE AGREEMENT)

9. Order of Precedence. Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment C (Standard Contract Provisions for Contracts and Grants)
- (3) Attachment E (BUSINESS ASSOCIATE AGREEMENT)
- (4) Attachment A (Specifications of Work to be Performed)
- (5) Attachment B (Payment Provisions)

VERMONT STATE COLLEGES: THIS CONTRACT IS ALSO AVAILABLE FOR USE BY THE UNIVERSITY OF VERMONT AND THE VERMONT STATE COLLEGES INC., A SEPARATE CORPORATION, HAVING UNDER ITS JURISDICTION CASTLETON STATE COLLEGE, JOHNSON STATE COLLEGE, LYNDON STATE COLLEGE, COMMUNITY COLLEGE OF VERMONT, AND THE VERMONT TECHNICAL COLLEGE.

TOWNS AND SCHOOLS OF THE STATE OF VERMONT: AT THE BIDDER'S ELECTION POLITICAL SUBDIVISIONS AND INDEPENDENT

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COLLEGES OF THE STATE MAY PARTICIPATE IN STATE CONTRACTS AT THE SAME PRICES, TERMS AND CONDITIONS. ITEMS FURNISHED TO POLITICAL SUBDIVISIONS AND INDEPENDENT COLLEGES WILL BE BILLED DIRECTLY TO AND PAID FOR BY THE POLITICAL SUBDIVISIONS OR INDEPENDENT COLLEGES AND NEITHER THE STATE NOR ITS COMMISSIONER OF BUILDINGS AND GENERAL SERVICES PERSONALLY OR OFFICIALLY ASSUMES ANY RESPONSIBILITY FOR THESE PAYMENTS.

THE VISA PURCHASING CARD MAY BE USED AS A FORM OF PAYMENT UNDER THIS CONTRACT.

CONTRACTOR CERTIFIES UNDER THE PAINS AND PENALTIES OF PERJURY THAT, AS OF THE DATE THIS CONTRACT AMENDMENT IS SIGNED, CONTRACTOR IS IN GOOD STANDING WITH RESPECT TO, OR IN FULL COMPLIANCE WITH A PLAN TO PAY ANY AND ALL TAXES DUE THE STATE OF VERMONT

IF YOU HAVE ANY QUESTIONS REGARDING THIS DOCUMENT PLEASE CONTACT:

STEPHEN FAZEKAS
PURCHASING AGENT
802-828-2210
FAX 802-828-2222
stephen.fazekas@vermont.gov

STATE OF VERMONT
CONTRACT #31184 AMENDMENT#1

It is hereby agreed by and between the State of Vermont, Office of Purchasing and Contracting (the "State") and Telelanguage Inc., with a principal place of business in Portland, OR (the "Contractor") that the contract between them originally dated as of May 01, 2016, Contract #31184, as amended to date, (the "Contract") is hereby amended as follows:

REMOVE/EXPAND/REVISE THE BELOW AMENDMENT ITEMS, AS APPLICABLE

I. Maximum Amount. The maximum amount payable under the Contract, wherever such reference appears in the Contract, shall be changed from \$100,000.00 to \$175,000.00, representing an increase of \$75,000.00.

II. Contract Term. The Contract end date, wherever such reference appears in the Contract, shall be changed from April 30, 2018 to April 30, 2019 The Contract Term may be renewed for one additional one-year period at the discretion of the State.

III. Attachment C, Standard State Provisions for Contracts and Grants. Attachment C is hereby deleted in its entirety and replaced by the Attachment C December 15, 2017 attached to this Amendment.

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

Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Contractor nor Contractor'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.

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

This document consists of 3 pages. Except as modified by this Amendment No. 1, all provisions of the Contract remain in full force and effect.

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State of Vermont

Buildings and General Services
Office of Purchasing & Contracting
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Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
STATE OF VERMONT CONTRACT #31184 AMENDMENT#2						

It is hereby agreed by and between the State of Vermont, The Department of Buildings and General Services, Office of Purchasing and Contracting (the "State") and Telelanguage Inc., with a principal place of business in Portland, OR (the "Contractor") that the contract between them originally dated as of May 01, 2016, Contract # 31184, as amended to date, (the "Contract") is hereby amended as follows:

REMOVE/EXPAND/REVISE THE BELOW AMENDMENT ITEMS, AS APPLICABLE

I. Maximum Amount. The maximum amount payable under the Contract, wherever such reference appears in the Contract, shall be changed from \$175,000.00 to \$300,000.00, representing an increase of \$125,000.00.

II. Contract Term. The Contract end date, wherever such reference appears in the Contract, shall be changed from April 30, 2019 to April 30, 2020.

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

Child Support (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs). Contractor is under no obligation to pay child support or is in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, neither Contractor nor Contractor'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.

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

This document consists of 3 pages. Except as modified by this Amendment No. 2, all provisions of the Contract remain in full force and effect.

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WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the STATE of VERMONT

By the CONTRACTOR

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: Christopher Cole

Name: _____

Title: BGS Commissioner

Title: _____

Email: _____

Email: _____

ATTACHMENT A (SCOPE OF WORK)

STATEWIDE Translation and Interpretation services

1. Contractor shall incorporate the ability to incorporate graphic layouts into translated materials.
2. Contractor shall provide a dedicated toll-free access number and unique security ID for service access.
3. Contractor shall provide tailored supplemental information fields for call tracking and trending by location.
4. Contractor shall provide on demand and scheduled pre-qualified, tested and industry-specialized language professionals in over 150 languages.
5. Contractor shall provide no cost user's guide and language identification card- electronic or hard copies if requested,
6. Contractor shall provide the following client service support, training and outreach programs.
 - i. Provide toll-free 24-hour technical support
 - ii. Provide complaint response within 24 hours of reported incident
 - iii. Provide complaint resolution within 72 hours of response time
7. Contractor shall provide monthly billing and call detail report access as
 - i. Provide monthly invoice and call detail report statements by Account ID code to each account's business manager.
 - ii. Monthly statements are issued "electronically" by the fifth business day of the following month
 - iii. Monthly statements are issued "postal delivery" by the eighth business day of the following month
 - iv. Provide monthly service level performance summary report by the tenth business day of the following month
8. Introductory Training Program; Contractor shall provide service introduction and interpreter awareness conference training sessions to client- designated representatives.
9. Account Relationship Coordinator; Contractor shall assign a designated account coordinator will be assigned to facilitate account management; support and maintain account activities, coordinate dispute review and resolutions, and administer monthly quality review and needs assessment courtesy calls with client-designated representatives.

Tim Bernal Toll-Free 888.983.5352 | Direct: 503.535.2178 E-mail: tbernal@telelanguage.com
10. Contractor must provide a professional interpreter corp qualified through a documented process of credentialing by the contractor.
11. Contractor shall demonstrate a well-established quality assurance process
12. Contractor shall provide complete confidentiality, Including HIPPA Compliance
13. Contractor shall provide complete Customer training and 24X7 Customer support

14. Contractor shall provide built in technological redundancy ensuring uninterrupted service
15. Upon request by the State, Contractor shall translate;
 - i. Spanish
 - ii. Italian, French, German, Portuguese
 - iii. Albanian, Bulgarian, Serbo-Croatian, (Bosnian, Serbian and Croatian)
 - iv. Czech, Dutch, Finnish, Greek, Hebrew, Hungarian, Polish, Russian
 - v. Arabic, Burmese, Farsi, Japanese, Nepali, Chinese (Mandarin & Cantonese), Korean, Vietnamese, Turkish & Other Asian languages
 - vi. African languages (Akan, Amharic, Maay Maay, Tigrinya, Swahili, Somali, Twi, Af-Maxaa, Kirundi, etc)
 - vii. Hmong, Tagalog,
 - viii. Languages not shown above may be requested and the contractor is expected to provide qualified Translators as available. In emergency situations, the contractor shall agree to make a good faith effort to provide languages and will notify the requesting party of the availability and turnaround time
16. Contractor shall for Translation services provide;
 - i. Have the ability to translate health and medical technical terms.
 - ii. The Contractor shall provide written translations (including proof reading) within the following time frames; Up to 2000 words (two calendar days), 2000 -4000 words (four calendar days), Over 4000 words (up to five calendar days)
 - iii. in case of emergency, contractor will do utmost to translate emergency documents in the shortest possible timeframe for such events as natural disasters or health emergencies
 - iv. Translations completed within 72 hours for standard priority and within 24 hours for rush service.
17. Upon request by the State, Contractor shall Interpret;
 - i. Essential languages are Arabic, Bosnian, Burmese, Chinese (Mandarin, Cantonese) French, Kirundi, Maay Maay, Nepali, Russian, Somali, Af-Maxaa, Spanish, Swahili, and Vietnamese.
 - ii. Languages not shown above may be requested and the contractor is expected to provide qualified interpreter as available. In emergency situations, the contractor shall agree to make a good faith effort to provide languages and will notify the requesting party of the availability and turnaround time.
18. Contractor shall for Interpretation services provide;
 - i. Average connect time less than 30 seconds.
 - ii. The same flat per-minute rate for all languages other than spanish, with charges rounded to the nearest second.
 - iii. Toll-free number.
 - iv. Provide over-the-phone interpreting of language-assisted calls 24 hours a day, 7 days a week, 365 days a year 888-983-5352.

ATTACHMENT B - PAYMENT PROVISIONS

STATEWIDE TRANSLATION & INTERPRETATION SERVICES

1. Contractor shall be paid based on documentation and itemization of work performed and included in invoicing. Invoicing must contain a detail of services including Name of requester, organization unit, language, time, date, type of service, number of words and document name.
2. Invoices shall list the contract number and if submitted at the time of order a purchase order number as well.
3. In consideration of the translation and interpretation services performed by Contractor, the State shall pay Contractor in accordance with the following schedule of rates. These rates are inclusive of all fees and expenses.
4. One time setup fee for initial account.....\$0.00
5. Monthly service fee (applied against usage).....\$0.00
6. Includes toll-free number assignment
7. Includes setup, training and implementation.
- 8.

Category	Cost	Minimum
Written Translation	\$0.28 per word	None
Written Translation Technical	\$0.30 per word	None
Written Translation Rush Service Within 24 hours	20% more than base	None
Written Translation Desktop Publishing Service	20% more than base	None
Telephone Interpretation	\$0.72 Per Minute	None
Video Interpretation	\$3.75 per minute	None

Invoices shall be submitted to the agencies listed invoicing address on their account.

ATTACHMENT E BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by and between **the State of Vermont** ("Covered Entity") and **Contractor** ("Business Associate"). This Agreement supplements and is made a part of the Contract to which it is an attachment.

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

The parties agree as follows:

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

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

The term "Individual" includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

The term "Breach" means the acquisition, access, use or disclosure of protected health information (PHI) in a manner not permitted under the HIPAA Privacy Rule, 45 CFR part 164, subpart E, which compromises the security or privacy of the PHI. "Compromises the security or privacy of the PHI" means poses a significant risk of financial, reputational or other harm to the individual.

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

- 2.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying contract with Covered Entity. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

- 2.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents (including subcontractors) in accordance with Sections 8 and 16 or (b) as otherwise permitted by Section 3.

3. **Business Activities.** Business Associate may use PHI received in its capacity as a "Business Associate" to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as "Business Associate" to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if (a) Business Associate obtains reasonable written assurances via a written 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 (b) the person notifies Business Associate, within three business days (who in turn will notify Covered Entity within three business days after receiving notice of a Breach as specified in Section 5.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in this Section must be of the minimum amount of PHI necessary to accomplish such purposes.
4. **Safeguards.** Business Associate shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate 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 shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.
5. **Documenting and Reporting Breaches.**
 - 5.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI as soon as it (or any of its employees or agents) become aware of any such Breach, and in no case later than three (3) 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.
 - 5.2 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.
 - 5.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce does not pose a significant risk of harm to the affected individuals, it shall document its assessment of risk. Such assessment shall include: 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 risk of harm. When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity.
6. **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.

7. Providing Notice of Breaches.

- 7.1 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 individuals whose PHI was 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.
- 7.2 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.
- 7.3 The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).
- 7.4 Business Associate shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR §164.406.
8. **Agreements by Third Parties.** Business Associate shall ensure that any agent (including a subcontractor) to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity agrees in a written agreement to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. For example, the written contract must include those restrictions and conditions set forth in Section 14. Business Associate must enter into the written agreement before any use or disclosure of PHI by 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 written agreement to Covered Entity upon request. Business Associate may not make any disclosure of PHI to any agent without the prior written consent of Covered Entity.
9. **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.
10. **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.
11. **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.

12. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity (without regard to the attorney-client or other applicable legal privileges) upon Covered Entity's request in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.
13. **Termination.**
- 13.1 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 17.7.
- 13.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate this Contract without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate this Contract without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under this Contract, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.
14. **Return/Destruction of PHI.**
- 14.1 Business Associate in connection with the expiration or termination of this Contract 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 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.
- 14.2 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.
15. **Penalties and Training.** Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

16. **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.

- 16.1 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.
- 16.2 Business Associate shall ensure that any agent (including a 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. 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 without the prior written consent of Covered Entity.
- 16.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an agent, including a subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than three (3) 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.
- 16.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

17. **Miscellaneous.**

- 17.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract, the terms of this Agreement shall govern with respect to its subject matter. Otherwise the terms of the Contract continue in effect.
- 17.2 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.
- 17.3 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.
- 17.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule) in construing the meaning and effect of this Agreement.
- 17.5 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.
- 17.6 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 under this Contract even if some of that information relates to specific services for which Business Associate may not be a "Business Associate" of Covered Entity under the Privacy Rule.
- 17.7 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.