MEMORANDUM OF UNDERSTANDING

The Brattleboro Retreat, a Vermont non-profit corporation ("Retreat") hereby enters into this Memorandum of Understanding ("MOU") with the Vermont Agency of Human Services ("AHS"), and its constituent departments, and the Office of the Vermont Attorney General (collectively, the "State"), by and through its Medicaid Fraud and Residential Abuse Unit ("MFRAU").

In consideration of the promises and the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. PURPOSE

The purpose of this MOU is to promote the Retreat's adoption and implementation of best-practices relating to Vermont Medicaid billing and claims filing, and compliance with the applicable state and federal laws, rules and regulations, including the Medicaid Covered Service Rules and Provider Manual issued by the Department of Vermont Health Access ("DVHA"), governing the submission and payment of Medicaid claims (collectively, "Government Health Care Program Requirements").

II. PRINCIPLES

A. Shared Interest

The State of Vermont is committed to providing its citizens with broad access to mental health and substance abuse care, including effective prevention, early intervention, and treatment. The Retreat is a key resource in this effort, providing a substantial portion of Vermont's adult psychiatric and Level I inpatient capacity, and serving as the only inpatient child and adolescent psychiatric care facility in Vermont.

The Retreat plays a prominent role in the provision of mental health and substance abuse services to members of Vermont Medicaid. As such, the State requires confidence in the overall effectiveness of the Retreat's Medicaid claims-filing. Further, the State and the Retreat share an interest in the Retreat's continued financial viability and stability, and the State will meet with the Retreat annually no later than December 1st to review and discuss possible increases to Medicaid reimbursement rates.

B. Confidence Building

The parties acknowledge that, from January 2015 to the present, some of the Retreat's Medicaid claims and billing practices have been suboptimal, imposing costs and inefficiencies on the Retreat's business operations and the State. The parties further acknowledge that improving the Retreat's Medicaid claims procedures and practices will benefit both the Retreat and the State. This MOU is intended to restore and maintain the State's confidence in the Retreat's management and operations in two principal ways.

First, this MOU provides for a third-party systems review of the Retreat's billing and claims practices and procedures, and business operations related to claims ("Systems Review"). The Systems Review will result in a set of best-practices recommendations that the State and Retreat shall adopt through a written memorandum.

Second, with respect to specific billing issues (described below), this MOU defines the State's expectations and requirements going forward, and establishes performance measures, as described in Article IV below. Article VI describes the conditions that might constitute a breach of this MOU. In the event that such a breach occurs, additional performance expectations shall become effective as described in Section VII.

In order to ensure the Retreat's ability to perform under this MOU, DVHA will appoint a facilitator to work directly with the Retreat to address and review claims-processing issues which may arise from time to time.

III. INDEPENDENT THIRD-PARTY REVIEW

A. Engagement of a Third-Party Review Organization

Within 60 days after the Effective Date, the Retreat shall identify an independent, third-party entity (or entities), such as an accounting, auditing, or consulting firm (hereinafter "Reviewer") with expertise in medical billing, claims filing, and business and accounting practices related to medical billing and claims filing. The Retreat's selection of the Reviewer shall be subject to the State's prior consent, which shall not be unreasonably withheld, conditioned or delayed. Once consent is obtained, the Reviewer shall commence work as soon as practicable.

The Reviewer shall perform the Systems Review in a professionally independent and objective fashion, as appropriate to the nature of the engagement, taking into account any other business relationships or engagements that may exist between the Reviewer and the Retreat. All fees and costs associated with the Reviewer's work shall be borne by the Retreat.

B. Reviewer Qualifications

The Reviewer shall:

a. assign individuals to conduct the Systems Review who have expertise in Medical billing, coding, reporting, and accounting, and compliance with Government Health Care Program Requirements, as well as expertise in best business practices relating to the operation and management of a mental health and substance abuse residential treatment facility;

b. assign individuals to conduct the claims and coding portions of the Systems Review who have a nationally recognized coding certification; and

c. have sufficient staff and resources to conduct the Systems Review on a timely basis.

C. Reviewer Responsibilities

The Reviewer shall:

a. perform the Systems Review in light of Government Health Care Program Requirements in making its assessment;

b. if in doubt of the application of a particular Medicaid policy or regulation, request clarification from the appropriate division of DVHA or the Department of Mental Health ("DMH");

c. respond to all DVHA or DMH inquires in a prompt, objective, and factual manner; and

d. prepare a timely, clear, well-written final report.

D. Components of the Systems Review

The Systems Review shall at a minimum consist of the following components:

a. A review of the Retreat's business practices and procedures related to its Medicaid billings and claims, including, but not limited to the Retreat's financial management and accounting systems, procedures and internal controls.

b. A review of the Retreat's billing and coding systems, practices and procedures relating to claims submitted to Vermont Medicaid program, staffing and training (including, but not limited to, the operation of the billing system, the process by which claims are coded, safeguards to ensure proper coding, claims submission and billing; and procedures to identify and correct inaccurate coding and billing). This shall include an examination of a randomly drawn sample of Medicaid claims submitted by the Retreat within the three-month period immediately prior to the Effective Date. The sample size and the method used for its selection shall be determined in the reasonable judgement of the Reviewer.

c. No later than thirty (30) days after it completes its review, the Reviewer shall provide a written report ("Report") of its Systems Review containing its observations and conclusions, and making recommendations either for additional investigation, or for improvements to the Retreat's systems, processes, staffing and training. The Report will be shared with the Retreat and the Secretary of the Agency of Human Services ("AHS") and the Office of the Attorney General.

d. Following completion of the Report, the Retreat and the Secretary of AHS or designee thereof shall meet to discuss the findings and agree to the adoption of best practices with respect to Medicaid claims billing, coding, submission and accounting. The parties shall memorialize these best practices in a written memorandum ("Best Practices Memorandum").

e. The Parties agree that the Reviewer's Report shall be used to improve the Retreat's Medicaid billing practices, consistent with the principles of collaborative process improvement articulated in this MOU. The State and the Retreat shall confer with the Reviewer to further define the scope and detail of the Systems Review engagement.

IV. RETREAT COMPLIANCE OBLIGATIONS

With respect to the specific issues identified below, the Retreat agrees to the following expectations and performance measures (each, a "Specific Compliance Obligation"):

A. PNMI Claims

The Retreat shall monitor its claims billing through remittance advices, and reconcile all outstanding Vermont Medicaid claims and resubmit updated claims in a timely manner. The Retreat and AHS shall continue to work together diligently to develop expectations and performance measures regarding PNMI claims. Once agreed upon, such expectations and performance measures shall be incorporated into this MOU.

B. Medicaid Claims

The Retreat shall have a Medicaid claims error rate of less than target rate recommended by the Reviewer and approved by DVHA, which rate shall increase in rigor for each year of this MOU. The error rate for a given year shall be calculated by dividing the aggregate Overpayments (in dollars) for a sample set of paid claims drawn from that year by the total dollar amount of payments received from Vermont Medicaid for such claims. Error rate measurement claims sets shall be selected randomly from the relevant period using methodology to be agreed upon by the parties and shall contain the greater of 50 claims or the minimum number of claims required for statistical significance. "Overpayment" means the amount of money the Retreat has received in excess of the amount due and payable under Vermont Medicaid program requirements. Error rate calculations shall be performed and reported by a Retreat-designated contractor no later than the end of the MOU year to which they relate. The claims in the sample shall be reviewed based upon the supporting documentation from the Retreat and applicable billing and coding regulations and guidance to determine whether the claims were correctly coded, submitted and reimbursed. The review does not include a review of the beneficiary's file to determine medical necessity, but it does include a review to ensure that prior authorizations were obtained, if necessary, and that any required medical documentation was submitted, where Vermont Medicaid regulations and guidance require for certain codes.

C. Timely Claims Filing

The Retreat shall file timely claims, as set forth in the Government Health Care Program Requirements. Specifically, the Retreat shall file initial claims within six (6) months of the date of service, as defined by the Government Healthcare Program Requirements. Recouped/re-billed claims must be submitted within the applicable timely filing requirements. The Retreat's claims shall meet these requirements at the rate recommended by the Reviewer and approved by DVHA, which rate shall increase in rigor for each year of this MOU.

In the event the Retreat is unable to timely file, when requesting review of claims that are older that six (6) months from the date of service, the Retreat shall use the procedural mechanisms for obtaining claims considerations set forth in the Government Health Care Program Requirements.

D. Usual & Customary Rate

The Retreat shall report its usual and customary rates on all Medicaid claims, as set forth in the Government Healthcare Program Requirements. The Retreat shall meet this requirement in accordance with targets recommended by the Reviewer and approved by DVHA, which targets shall increase in rigor for each year of this MOU. The Retreat shall also notify DVHA whenever its usual and customary rates change. No individual at DVHA, DMH, or their contracted vendor may request or authorize the Retreat to report any rate other than its usual and customary rate on any Medicaid claim.

E. Billing Primary Insurance before Medicaid

As set forth in the Government Healthcare Requirements, Vermont Medicaid is the payer of last resort. The Retreat shall properly prioritize its billing claims, billing all other payers before a Medicaid claim is filed. The Retreat shall meet this requirement one hundred percent (100%) of the time, when it knows, reasonably should know, or would have discovered upon reasonable inquiry or investigation, that another payer is liable. "Reasonable inquiry or investigation" as it is used in this paragraph shall require all receptionists or other individuals responsible for collecting insurance data to collect that data from the patient or patient's representative at the initial visit and at least monthly, thereafter, for continuing episodes of care.

F. Provider Enrollment

As set forth in the Government Healthcare Requirements, the Retreat shall commence enrollment with Vermont Medicaid of all of its individual providers prior to such providers performing services for which the Retreat shall submit a Vermont Medicaid claim.

V. TERM AND SCOPE

The scope of this MOU includes the Systems Review and the Specific Compliance Obligations, described in Sections III and IV, as well as the Retreat's procedures to ensure compliance with Government Health Care Program Requirements.

The period of the Specific Compliance Obligations the Retreat assumes under this MOU shall be three years from the Effective Date, unless earlier terminated by the State. The "Effective Date" shall be the date on which the final signatory executes this MOU. The term of this MOU may be reduced to two years at the discretion of the State if, at the end of that time, the Retreat has successfully met all of its Specific Compliance Obligations without breach.

This MOU in no way limits or modifies the Retreat's obligations as a Medicaid provider to comply with its Provider Enrollment Agreement and Government Health Care Program Requirements, or the State's ability to investigate allegations of improper or false claims, or to enforce the Provider Enrollment Agreement or Government Health Care Program Requirements through criminal, civil or administrative actions.

VI. BREACH & DEFAULT

The Retreat shall be deemed in breach of this MOU, if the Commissioner of the DVHA determines that the Retreat has failed to meet one or more of its Specific Compliance Obligations.

For a first breach, the State shall notify the Retreat in writing and provide an opportunity to cure the defect within a timeframe acceptable to the State and agreed to by the Retreat, but in no event less than 15 business days.

If the Retreat does not remedy the first breach within the agreed upon cure period, or in the event of a second breach of its Specific Compliance Obligations, the State may declare the Retreat in default of this MOU. In the event of default, the Retreat agrees that the conditions of Section VII shall become effective immediately and without further action between the parties, as of the date on which the State declares default under this MOU. The State may, in its sole discretion waive breach of a Specific Compliance Obligation if it determines that the Retreat made substantial efforts to meet it and its failure is due to circumstances beyond its reasonable control.

VII. ADDITIONAL PERFORMANCE EXPECTATIONS IN THE EVENT OF DEFAULT

In the event that the State declares default, within 5 business days of the State's declaration and notice, the Retreat agrees that it shall enter into a Corporate Integrity Agreement ("CIA") with the State for a term of three years. The CIA shall be substantially similar to the AGO's standard corporate integrity agreement template, with such modifications as may be necessary and appropriate in light of the particular breach or breaches at issue.

VIII. ADDITIONAL TERMS AND CONDITIONS

The laws of the State of Vermont govern this MOU. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this MOU shall be the Vermont Superior Court, Washington County, unless otherwise agreed in writing by the State and the Retreat.

The Retreat represents and warrants that the representative designated below is authorized to execute this MOU on behalf of the Retreat. The undersigned State signatories represent that they are signing this MOU in their official capacities and that they are authorized to execute this MOU on behalf of the State through their respective agencies and departments.

This MOU shall be binding on all successors, transferees, heirs, and assigns of the Parties.

This MOU constitutes the complete understanding between the Parties with respect to the subject matter hereof and shall not be amended except by written consent of the Parties.

This MOU may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

[remainder of this page is intentionally blank]

SIGNATORIES

STATE OF VERMONT

DATED: 6/27/18 BY: _____
Thomas J. Donovan, Jr.
Vermont Attorney General

DATED: _____ BY: _____
Al Gobeille
Secretary
Agency of Human Services

THE RETREAT

DATED: _____ BY: _____
Louis Josephson
President and Chief Executive Officer

SIGNATORIES

STATE OF VERMONT

DATED: _____ BY: _____
Thomas J. Donovan, Jr.
Vermont Attorney General

DATED: 6.28.18 BY: _____
Al Gobeille
Secretary
Agency of Human Services

THE RETREAT

DATED: _____ BY: _____
Louis Josephson
President and Chief Executive Officer

SIGNATORIES

STATE OF VERMONT

DATED: _____ BY: _____
Thomas J. Donovan, Jr.
Vermont Attorney General

DATED: _____ BY: _____
Al Gobeille
Secretary
Agency of Human Services

THE BRATTLEBORO RETREAT

DATED: 6/27/2018 BY: _____
Louis Josephson
President and Chief Executive Officer

DATED: _____ BY: _____