1. Parties: This is a Grant Agreement between the State of Vermont, Agency of Human Services, **Office of Vermont Health Access** (hereinafter called "State"), and **Vermont Legal Aid, Inc.** with a principal place of business at 264 North Winooski Avenue, Burlington, VT 05401 (hereinafter called "Subrecipient"). Subrecipient is required by law to have a Business Account Number from the Vermont Department of Taxes.

2. Subject Matter: The subject matter of this Grant Agreement is the provision of health care ombudsman services to the Office of Vermont Health Access (OVHA), for beneficiaries receiving health care services from OVHA and/or others who receive health care benefits from the Department of Children and Families. Detailed services to be provided by the Subrecipient are described in Attachment A.

3. Maximum Amount: In consideration of the services to be performed by Subrecipient, the State agrees to pay Subrecipient, in accordance with the payment provisions specified in Attachment B, a sum not to exceed **$307,246.00.**

4. Grant Term: The period of Subrecipient's performance shall begin on **July 1, 2009** and end on **June 30, 2010.** The grant may be extended up to one additional year subject to the agreement of both parties.

5. Source of Funds: Global Commitment to Health 100%

6. CFDA Title: Medical Assistance Program, Medicaid Title XIX
   CFDA Number: 93.778
   Award Name: Office of Vermont Health Access - Health Care Ombudsman Program
   Award Number: 03410-218-10
   Award Year: July 1, 2009 – June 30, 2010
   Federal Granting Agency: Department of Health and Human Services
   Research and Development Grant? No.

7. Amendment: No changes, modifications, or amendments in the terms and conditions of this Grant Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Subrecipient.

8. Cancellation: This Grant Agreement may be suspended or cancelled by either party by giving written notice at least 30 days in advance.

9. Contact persons: The Subrecipient's contact person for this award is: Eric Avildsen, Telephone Number 802-863-2316.

10. Fiscal Year: The Subrecipient's fiscal year begins October 1 and ends September 30.

Attachments: This Grant consists of 23 pages including the following attachments that are incorporated herein:

Attachment A - Scope of Work to be Performed
Attachment B - Payment Provisions
Attachment C - Customary State Grant Provisions
Attachment E – Business Associates Agreement
Attachment F – Other AHS Grant Provisions

The order of precedence of documents shall be as follows:

1. This document
2. Attachment C
3. Attachment A
4. Attachment B
5. Attachment E
6. Attachment F

WE, THE UNDERSIGNED PARTIES, AGREE TO BE BOUND BY THIS GRANT AGREEMENT.

STATE OF VERMONT

By: Susan W Besio

Susan Besio, Director
Office of Vermont Health Access

Date: 6/25/09

SUBRECIPIENT

by:

Eric Avildsen, Executive Director
Vermont Legal Aid
FEIN: 03-0219366

Date: 6-19-09

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED

I. Purpose

1. This grant relates to the operation of a health care ombudsman office, as authorized by the 1995 General Assembly in Section 14 (b) (2) of Act 14 and 1998 General Assembly in Section 2 of Act 159, and as codified at 8 V.S.A. §§ 4089i – 4089j.

II. Responsibilities of the Subrecipient

1. The Subrecipient agrees to operate the office of health care ombudsman and to make this service available equally to all beneficiaries of the Office of Vermont Health Access and/or others who receive health care benefits from the Department for Children and Families.

2. The Subrecipient agrees to provide continuing administration for this office during the term of this Grant, including sufficient administrative support for the office, including office space, equipment (including necessary computing equipment), telephone and TDD equipment, and clerical support. The Subrecipient agrees to limit use of an automated voice telephone answering system in connection with the ombudsman program and make all possible efforts to have staff answer all calls in person during regular business hours.

3. The Subrecipient agrees to directly employ the health care ombudsman and any health care advocates who will provide ombudsman services. The health care ombudsman will be a person with demonstrated appropriate expertise and experience in health insurance and advocacy.

   While the Subrecipient retains the right to select and hire the person who will serve as the health care ombudsman, the State will participate in the interview process for the hiring of any ombudsman subject to this Grant. If the State reasonably determines the person selected to be the health care ombudsman does not have the level of expertise and experience required it may terminate this Grant on thirty (30) days prior written notice.

4. The Subrecipient will assure that all health care advocates, and any other staff who may be involved in the ombudsman program, will have access to legal advice on a timely basis.

5. The Subrecipient agrees to provide ombudsman services throughout Vermont, as well as maintaining a dedicated toll-free telephone number. The Subrecipient agrees to maintain a statewide presence for the office.

6. The Subrecipient will analyze, monitor, facilitate public comment, and recommend changes deemed necessary on federal and state laws, regulations, and policies related to health insurance or health care benefits provided by OVHA.

7. The Subrecipient agrees to provide an annual budget to the State no later than May 1st, during the term of this agreement, and to enter into budget negotiations with the State. The Subrecipient should submit an overall budget and allocation for OVHA for the State fiscal year. The Subrecipient acknowledges that the State must approve the budget for this Grant. The Subrecipient agrees to

Subrecipient agrees to accept payment from the State as outlined in Attachment B as payment in full for services rendered under this Grant.

The Subrecipient agrees to make information obtained through its health care ombudsman functions available to the State within the limits of the States established confidentiality policies and rules.

8. The Subrecipient agrees to submit quarterly statistical reports to OVHA for the Ombudsman program, which indicate the number of cases opened, pending and closed, a breakdown by case type, the manner of disposition, and a categorization of the complainant's demographic information regarding the cases. The Subrecipient will maintain its current system of logging every call into its database. This includes demographic data, consumer issues, insurance coverage, and case resolution. The Subrecipient logs outcomes for each case that requires direct or complex intervention, or representation for issues of access to care, billing/coverage, and eligibility. The system maintains a list of all open cases by ombudsman, and tracks the number of cases opened, closed, and ongoing.

The Subrecipient agrees to report to the State any systemic issues it identifies, and describe the information used to make the determination. The Subrecipient will offer suggestions and recommendations quarterly to OVHA for changes to the program or policies and procedures that will benefit consumers. Quarterly Reports shall be due three (3) weeks following the end of the quarter.

Both BISHCA and OVHA reserve the right to revise these reporting requirements and require submission of such additional information, or regrouping of the data into such different categories as either BISHCA or OVHA deems necessary to administer the Grant, and to identify and address significant problems.

9. The Subrecipient agrees to inform the State of the development of consumer materials, and to share consumer materials with the State prior to printing and distribution. These materials include educational documents developed for distribution to the public.

10. The Subrecipient agrees to develop protocols to ensure the effective and efficient delivery of ombudsman services including processes to ensure that beneficiaries have timely access to the services provided by the office, for dealing expeditiously with requests for assistance, and to establish procedures for expedited processing and resolving complaints involving emergency or urgent services. The Subrecipient agrees to provide the State copies of such protocols upon request.

11. The Subrecipient and all employed or contracted persons agree to abide by AHS Rule 08-048 on confidentiality except to the extent that responsibilities under the Rule conflict with duties imposed by the Rules of Professional Conduct. When the subrecipient identifies a situation where compliance with Rule 08-048 would contravene the Rules of Professional Conduct, the subrecipient must make a general report to the grant manager in order to determine whether a disclosure should occur. Such a determination may involve discussion with the Office of Attorney General and/or submission of the concern to Advisory Committee of Ethics of the Vermont Bar. Additionally, the

Vermont Bar. Additionally, the Subrecipient, and all its employees agree to be bound by its own confidentiality policies, including the requirements of the Code of Professional Responsibility. In the absence of consent by a complainant or an individual utilizing the services of the ombudsman's office, or his or her guardian or legal representative, or court order, the Subrecipient and all employed or contracted persons agree not to disclose the identity of the complainant or individual.

The Subrecipient further agrees to keep confidential and proprietary information related to the State and all agencies and companies related to this Grant confidential. Subrecipient agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner or form or authorize or permit others to do so. Subrecipient will take reasonable measures as are necessary to restrict access to information in the Subrecipient's possession to those employees on his/her staff that must have the information on a need-to-know basis. Subrecipient agrees to immediately notify, in writing, the State's authorized representative in the event Subrecipient determines or has reason to suspect a breach of this requirement.

12. The Subrecipient may seek appropriate grants for purposes consistent with the conduct of the health care ombudsman program, to supplement the funding available from the State.

13. The Subrecipient, health care ombudsman, and those employees and contractors involved in the health care ombudsman program, including immediate family or household members, may not have any conflict of interest relating to the performance of the responsibilities set forth in this Grant. For purposes of this Grant, a conflict of interest exists whenever the Subrecipient, health care ombudsman, and those employees and contractors involved in the health care ombudsman program, including immediate family or household members:

A. have direct involvement in the licensing, certification, or accreditation of a health care facility, health insurer, or health care provider;

B. have direct ownership interest or investment interest in a health care facility, health insurer, or a health care provider;

C. are employed by, or participating in the management of a health care facility, health insurer, or health care provider; or

D. receive, or have the right to receive, directly or indirectly, remuneration under a compensation arrangement with a health care facility, health care insurer or health care provider.

The Subrecipient agrees to promptly report any conflicts of interest to the State. Additionally, the Subrecipient agrees to make its best efforts to give the State notice if any of its employees or contractors not directly involved with the health care ombudsman program, or their immediate family or household members, would have a conflict of interest as defined above if they were directly involved with the health care ombudsman program.

14. The Subrecipient will assist beneficiaries of the Office of Vermont Health Access and others receiving health care benefits from the Department for Children and Families, and facilitate timely resolution of beneficiary health care issues or problems related to the program and health care policies, operations and services. The Subrecipient will work collaboratively with OVHA, the Department for Children and Families, OVHA's member services contractor, prior authorization review agent, pharmacy benefit manager, any future contracted health plans and other state agencies to improve services and resolve enrollee problems. The Subrecipient will assist beneficiaries of the Office of Vermont Health Access and others receiving health care benefits from the Department for Children and Families to understand their rights and responsibilities, how to use the existing grievance procedures and appeal processes, and provide guidance and assistance as necessary.

In resolving beneficiary complaints or problems the Subrecipient may review the health insurance records of a beneficiary who has provided consent, and pursue administrative (filing and pursuit of complaints and appeals), judicial and other remedies on behalf of the individual, or group of consumers.

15. The Subrecipient will maintain an on-going process for assessing and monitoring consumer interests.

16. The Subrecipient will assure that ombudsman activities are coordinated with all relevant parties to ensure that member's questions and concerns are addressed in an efficient manner.

17. The Subrecipient will respond to calls from beneficiaries of the Office of Vermont Health Access and others receiving health care benefits from the Department for Children and Families in a timely and appropriate manner; and to meet with a consumer if needed to resolve a problem.

18. The Subrecipient will be available to beneficiaries of the Office of Vermont Health Access and others receiving health care benefits from the Department for Children and Families with live help, during normal business hours of the Subrecipient.

19. The Subrecipient will perform outreach activities to educate beneficiaries of the Office of Vermont Health Access and others receiving health care benefits from the Department for Children and Families, about the requirements of OVHA health care programs, the appeals processes of the State, and the role of the Ombudsman Office and how it can be accessed.

20. The Subrecipient will meet with OVHA and attend Legislative Oversight Committee Meetings and Medicaid Advisory Board Meetings on a regular basis. The Subrecipient may provide information to the public, agencies, legislators and others regarding problems or concerns and make recommendations for resolving those problems or concerns.

21. The Subrecipient will monitor consumer satisfaction using its current system. The Subrecipient will send a Client Satisfaction Questionnaire to every consumer whose case is resolved through direct or complex intervention, or representation. The Subrecipient will follow up with each consumer who indicates dissatisfaction with services received or needs additional assistance. The Subrecipient will report on consumer satisfaction in its annual report.

22. The Subrecipient will work with the OVHA member services firm, Economic Services Division District Offices including the Health Access Eligibility Unit, and other as is appropriate to ensure the consumers are informed about the availability of the Ombudsman.

23. Subrecipient will provide the OVHA Grant Manager with copies of correspondence or emails that identify any ongoing OVHA/ESD operational problems. Examples might include, but are not limited to, delays in prior authorizations, claims processing delays, beneficiary access to health care or prescription drugs, member service issues or any other alleged problem that impacts the OVHA/ESD administration of providing health care to beneficiaries. The purpose of this provision is to help facilitate collaboration and resolution of problems.

III. Obligations of the State

1. The State will monitor the performance of the Subrecipient throughout the term of the Grant.

2. The state will report to the Health Access Oversight Committee of the General Assembly on the status of the health care ombudsman program upon request.

3. The State will adopt any policies, procedures, and/or rules it deems necessary to ensure the cooperation of state agencies with the office of health care ombudsman.

4. The State will in a timely manner provide feedback on any consumer materials produced to ensure consistent and coordinated content.

5. The State will designate a Grant manager.

ATTACHMENT B
PAYMENT PROVISIONS

Subrecipient shall invoice OVHA for one twelfth of the grant amount for each of the months of July, August, October, November, January, February, April and May. For the months of September, December, and March the Subrecipient shall invoice for one-twelfth of the contract amount less any unexpended funds from the prior two months. For the month of June, the Subrecipient shall invoice for the total expenses for the contract year (up to the maximum of the budget amount) less any funds received during the contract year. The Subrecipient will provide a categorical expenditure report for each quarter (September, December, March, and June) detailing work performed pursuant to this grant.

Approved Budget for SFY 2010:

Category of Expenditure	**SFY 2010 Budget**
Personnel	
Health Care Ombudsman Attorneys	$ 51,902
Health Care Counselors	$ 84,560
Administrative Support	$ 24,105
Clerical Support	$ 7,338
Total Salaries	$ 167,905
Fringe Benefits	$ 88,505
Fringe Benefits Percent	52.7
Total Personnel Costs	**$ 256,410**
Operating Costs:	
Occupancy	$ 29,686
Telephone	$ 1,056
Office Supplies	$ 1,331
Postage	$ 1,388
Equipment Rental and Repair	$ 1,529
EDS and Network Maintenance	$ 3,031
Depreciation	$ 2,108
Insurance	$ 77
Law Library	$ 1,738
Management Expenses	$ 1,354
Employment Advertising	$ 296
Miscellaneous	$ -
Total Operating Expenses	**$ 43,593**
Grant Specific Costs	
Training and Conferences	$ 2,440
Litigation	$ 94
Publications, Community Outreach, Media	$ 1,139
Travel	$ 2,087
Long Distance Calls	$ 1,482
Total Grant Specific Costs	**$ 7,242**
Grand Total	**$ 307,246**

Variances of the budget in the Personnel, Operating, or Grant Specific categories shall not exceed 10% without prior approval from OVHA.

Invoices should be sent to:

Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05498-2087
Attn: Greg Needle

Payment of invoices shall be rendered contingent upon the State's timely receipt of Quarterly reports and other deliverables as may be set forth in Attachment A, Specifications of Work To Be Performed.

ATTACHMENT C
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

1. **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.

2. **Applicable Law.** This Agreement will be governed by the laws of the State of Vermont.

3. **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.

4. **Appropriations:** If appropriations are insufficient to support this Agreement, the State may cancel on a date agreed to by the parties or upon the expiration or reduction of existing appropriation authority. In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to fund this Agreement from State revenues.

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

   The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. 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 Party shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Agreement.

   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.

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

7. **Insurance**: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverage is in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverage 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.

   General Liability and Property Damage: With respect to all operations performed under the 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 Per Occurrence
   $1,000,000 General Aggregate
   $1,000,000 Products/Completed Operations Aggregate
   $ 50,000 Fire/ Legal/Liability

   Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

   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: $1,000,000 combined single limit.

   Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

   Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of **$1,000,000** per occurrence, and **$1,000,000** aggregate.

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

9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends $500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than $500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: http://finance.vermont.gov/forms

10. **Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter 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. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

11. **Fair Employment Practices and Americans with Disabilities Act**: Party agrees to comply with the requirement of Title 21V.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 that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

12. **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.

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

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

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

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

Party also understands the State may set off taxes (and related penalties, interest and fees) due to the

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.

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

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

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

15. **Sub-Agreements**: Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

    Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of or reorganization of the Party.

16. **No Gifts or Gratuities**: Party shall not give title or possession of any thing 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.

17. **Copies**: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. **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.

ATTACHMENT E
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by and between the State of Vermont Agency of Human Services operating by and through its **Office of Vermont Health Access** ("Covered Entity") and **Vermont Legal Aid** ("Business Associate") as of **July 1, 2009** ("Effective Date"). 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").

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). All references to "PHI" mean Protected Health Information. All references to "Electronic PHI" mean Electronic Protected Health Information.

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 provided that any use or disclosure would not violate the minimum necessary policies and procedures of 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 6 and 14 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 contract from the person to

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 promptly notifies Business Associate (who in turn will promptly notify Covered Entity) in writing of any instances of which it is aware in which the confidentiality of the PHI has been breached. Uses and disclosures of PHI for the purposes identified in this Section 3 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. 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. **Reporting**. Business Associate shall report in writing to Covered Entity any use or disclosure of PHI in violation of this Agreement by Business Associate or its agents including its subcontractors. Business Associate shall provide this written report promptly after it becomes aware of such use or disclosure. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate the impermissible use or disclosure. Consistent with 45 CFR 164.502(j)(1) Business Associate may use PHI to report violations of law to federal and state authorities.

6. **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 contract 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 12. Business Associate must enter into the written contract before any use or disclosure of PHI by such agent. The written contract must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the contract concerning the use or disclosure of PHI. Business Associate shall provide a copy of the written contract 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.

7. **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. Business Associate shall promptly forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

8. **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. Business Associate shall promptly forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.

9. **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. Business Associate shall promptly forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

10. **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.

11. **Termination.**

11.1 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 15.11.

11.2 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.

12. **Return/Destruction of PHI**.

12.1 Business Associate in connection with the expiration or termination of this Contract shall return or destroy 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

Business Associate is to provide this certification during this thirty (30) day period.

12.2 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.

13. Notice/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 information security awareness training regarding the use, confidentiality, and security of PHI.

14. Security Rule Obligations. The following provisions of this Section 14 apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

14.1 Business Associate shall implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of 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.

14.2 Business Associate shall ensure that any agent (including a subcontractor) to whom it provides Electronic PHI agrees in a written contract 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 contract before any use or disclosure of Electronic PHI by such agent. The written contract must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the contract concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written contract 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.

14.3 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 promptly after it becomes aware of any such Security Incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

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

15. Miscellaneous.

15.1 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.

15.2 Any reference to "promptly" in this Agreement shall mean no more than seven (7) business days after the circumstance or event at issue has transpired. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended or renumbered.

15.3 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of a use or disclosure of PHI in violation of any provision of this Agreement.

15.4 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.

15.5 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.

15.6 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.

15.7 This Agreement may be amended or modified, and any right under this Agreement may be waived, only by a writing signed by an authorized representative of each party.

15.8 Nothing express or implied in this Agreement is intended to confer upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever. Notwithstanding the foregoing, the Covered Entity in this Agreement is the Agency of Human Services operating by and through its Office of Vermont Health Access. Covered Entity and Business Associate agree that the term "Covered Entity" as used in this Agreement also means any other Department, Division or Office of the Agency of Human Services to the extent that such other Department, Division, or Office has a relationship with Business Associate that pursuant to the Privacy or Security Rules would require entry into an agreement of this type.

15.9 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.

15.10 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.

15.11 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 12.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 9 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

15.12 This Agreement constitutes the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written agreements between the parties in such respect.

ATTACHMENT F
AGENCY OF HUMAN SERVICES CUSTOMARY PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.

2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's 2-1-1. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org

3. **Medicaid Program Contractors**:

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

   Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and

   Inspect and audit any financial records of such contractor or subcontractor.

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

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

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

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

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

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

7. **Privacy and Security Standards.**

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

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

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

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

8. **Abuse Registry.** The contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the contractor holds a valid child care license or registration

or registration from the Division of Child Development, Department for Children and Families, the contractor shall also check the Central Child Abuse Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911 (c)(3)).

9. **Child Abuse Reporting.** Consistent with provisions of 33 V.S.A. §4913(a), any agent or employee of a contractor who, in the performance of services connected with this agreement, has contact with clients and who has reasonable cause to believe that a child has been abused or neglected as defined in Chapter 49 of Title 33 V.S.A. shall report the suspected abuse or neglect to the Commissioner for the Department for Children and Families within 24 hours. The report shall contain the information required by 33 V.S.A. §4914.

10. **Work Product Ownership.** All data, technical information, materials 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 contract - 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 developed for the State, all the work shall be considered "work for hire," i.e., the State, not the contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed.

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

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

12. **Intellectual Property Ownership.** All work products and items delivered or produced under this agreement will be the exclusive property of the State of Vermont unless otherwise specified in this agreement. This includes, but is not limited to, software, documentation, and development materials. The contractor shall not sell or copyright a work product or item produced under this contract without explicit permission from the State. If the Contractor is operating a system or application on behalf of the State of Vermont then the contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior

Vermont, without prior authorization by the State.

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

14. **Non–discrimination.** The contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

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

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

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

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