1. **Parties.** This is a contract for personal services between the State of Vermont, Office of Vermont Health Access (hereafter called "State"), and Ann Goering, PC with a principal place of business in 32 E Malletts Bay Avenue, Winooski, VT 05404 (hereafter called "Contractor"). The Contractor's form of business organization is a private 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 personal services generally on the subject of clinical support for the Associate Medical Director and Interim Medical Director. 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 $15,000.00.

4. **Contract Term.** The period of Contractor's performance shall begin on May 7, 2009 and end on May 6, 2010.

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.

6. **Amendment.** 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 cancelled by either party by giving written notice at least 30 days in advance.

8. **Attachments.** This contract consists of 16 pages including the following attachments, which are incorporated herein:

   Attachment A - Specifications of Work to be Performed
   Attachment B - Payment Provisions
   Attachment C - Customary State Contract provisions
   Attachment E - Business Associate Agreement
   Attachment F - Customary Contract Provisions of the Agency of Human Services
   Appendix 1 – AHS Consumer Information & Privacy Rule (pages are not numbered)

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
7) Appendix 1

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.

BY THE STATE OF VERMONT:

Date: 5/12/09

Signature: Susan W Besio

Name: Susan Besio
Title: Director
Office of Vermont Health Access

BY THE CONTRACTOR:

Date: 5/5/09

Signature:

Name: Ann Goering, PC
Title: Consultant
Phone: 802-655-4422
SSN: 402-66-8113

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED

Contractor Services:

The Contractor shall provide clinical administrative support to include (but not limited to) the following activities:

- Case Reviews
- Placement Reviews
- Clinical Guideline Consultation and Maintenance
- Medical/Pharmacy Prior Authorization Consultation with Nursing/Pharmacy staff
- Prior Authorization Criteria Review
- Coverage Review
- Coverage Exception Requests and Appeals
- Buprenorphince Program Physician Participation
- Support and assist legal counsel in connection with administrative appeals at the Human Services Board, including reviewing evidence, providing written statements and testifying as needed

State point of contact for oversight of Contractor activities is:

Susan Besio, Director
Office of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495
(802) 879-5952

ATTACHMENT B
PAYMENT PROVISIONS

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for services specified in Attachment A, or services actually performed, up to the maximum allowable amount specified in this agreement. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this attachment. The following provisions specifying payments are:

1. The State will pay the Contractor for work performed as described in Attachment A and will reimburse the Contractor at the rate of $90.00 per hour, to a maximum amount of $15,000.00.

2. The State and the Contractor will work together to assure that completion of the work within the overall budget. The Contractor will submit an invoice to the State on a monthly basis and will be paid upon the State's approval of the work completed. The invoices will list date, case number, nature of activity and the total hours spent on each activity.

3. The Contractor will submit monthly invoices for services rendered under this contract to:

   Susan Besio, Director
   Office of Vermont Health Access
   312 Hurricane Lane, Suite 201
   Williston, VT 05495-1201

4. The State will remit all payments to:

   Ann Goering, PC
   32E Malletts Bay Avenue
   Winooski, VT 05404

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 ***$____N/A_____*** per occurrence, and ***$____N/A_____*** 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 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 **Ann Goering, PC** ("Business Associate") as of **May 7, 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 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 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 CONTRACT PROVISIONS

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

2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's 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 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 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.

APPENDIX 1

Definitions

1. **Definitions**

1.1 "Agency" means the Vermont Agency of Human Services or any of its departments, offices, or divisions.

1.2 "Consumer" means an individual or family who is served, voluntarily or involuntarily, by the Agency. A Consumer served by any department, office, division, or program of the Agency, or its Contractors or Grantees, is considered to be a Consumer of the entire Agency.

1.3 "Contractor" means an individual or entity with whom the Agency has a contract to provide services. This rule only applies to such individuals or entities when they are providing these services under the contract.

1.4 "Disclose" or "Disclosure" means a communication of a Consumer's Individually Identifiable Information, an affirmation of another person's communication of Individually Identifiable Information, or an acknowledgment of an individual's status as a recipient of services or benefits, outside the Agency.

1.5 "Employee" means any person who works in a full-time, part-time, or temporary position for the Agency. Volunteers and interns of the Agency are considered Employees and have the same obligations under this rule as Employees.

1.6 "Grantee" means an individual or entity with whom the Agency has a grant to provide services. This rule only applies to such individuals or entities when they are providing these services under the grant.

1.7 "Individually Identifiable Information" means information created or received by the Agency or its Contractors and Grantees that identifies a Consumer, or where there is a reasonable basis to believe the information can be used to identify a Consumer.

1.8 "Inter-Disciplinary Team" means a group of Employees, Contractors, Grantees, or other individuals who are engaged in identifying, coordinating, planning, arranging, and providing support or services to a Consumer in order to carry out the Agency's legal obligations.

1.9 "Need-to-Know" means a Contractor, Grantee, or Employee has an actual need to access the information to perform his or her work on behalf of the Agency.

Definitions

1.10 "Program Administration" means activities necessary to carry out the operations of the Agency. This consists of establishing eligibility and scope of services and assistance for which a Consumer has applied including the identification and coordination of those services within the Agency and its Contractors and Grantees; planning, arranging, providing, funding, or paying for services and assistance for individuals and families; coordination of benefits; detecting fraud and abuse; engaging in quality control and improvement activities; emergency response or disaster relief, and complying with federal and state legal, reporting, and funding requirements. Program administration is synonymous with agency administration and is bounded by state and federal enactments that require stricter confidentiality.

1.11 "Record" means any item, collection, or grouping of written or electronic information that includes Individually Identifiable Information that is maintained, collected, or used by the Agency, in whole or in part, to make decisions about an individual.

1.12 "Share" or "Sharing" means a communication of a Consumer's Individually Identifiable Information, an affirmation of another person's communication of Individually Identifiable Information, or an acknowledgment of an individual's status as a recipient of services or benefits within the Agency and its Contractors or Grantees when they are performing work on behalf of the Agency.

2. Basic Principles

2.1 Principles of Confidentiality

The respectful treatment of Consumers includes respecting the privacy of their Individually Identifiable Information, while making every effort to meet their needs and assist them to successfully navigate the human services system.

All Individually Identifiable Information is presumed to be confidential and subject to these standards. Employees shall not Disclose the Individually Identifiable Information unless the Disclosure is authorized by the Consumer, a court, or is otherwise permitted or required by law.

Some Individually Identifiable Information is protected by federal and state confidentiality laws that have more rigorous standards which are not preempted by this rule and require informed Consumer consent before Disclosure.

2.2 Disclosures Required or Permitted by Law

This rule is not intended to expand or diminish current provisions in law relating to disclosure of confidential information.

2.3 Information Collection

Employees shall collect and record only the minimum amount of Individually Identifiable Information needed to fulfill the goals of serving the Consumer and meeting administrative or legal obligations.

2.4 Informing Consumers

At the earliest opportunity, Employees, Grantees and Contractors shall provide a Notice of Individually Identifiable Information Practices and explain to each individual or family the confidentiality laws that apply to Agency services. The Contractor's or Grantee's explanation shall include a description of the types of Individually Identifiable Information that may be lawfully used based on the scope of their work on behalf of the Agency and the situations in which a Consumer's consent is needed to permit a Disclosure.

3. Permissible Sharing and Disclosure

3.1 Sharing and Disclosure of Individually Identifiable Information

Except as provided in section 3.2 and for uses of Individually Identifiable Information that are permitted or required by state and federal law, Employees, Contractors and Grantees will ensure written permission or authorization has been obtained to disclose Individually Identifiable Information with non-Agency related service providers who are involved with the Consumer's services prior to Sharing or Disclosing any information.

When the Sharing or Disclosing of information is initiated by Employees or by Contractors and Grantees performing Agency work, the permission or authorization used will contain the required information set forth in this rule in section 4.2, except as otherwise provided by law.

All Sharing and Disclosures made by Employees, Contractors, and Grantees pursuant to Consumer consent shall include only the Individually Identifiable Information necessary for the purposes for which the permission or authorization was given and shall be made only as indicated in the permission or authorization.

Under all circumstances, all Individually Identifiable Information Shared among Employees, Contractors, and Grantees who are involved with providing services to the Consumer, or who administer those services, will be shared only on a Need-to-Know basis.

3.2 Information Sharing for Program Administration

Unless otherwise prohibited or restricted by law, the Agency may Disclose and Share Individually Identifiable Information without consent when required for Program Administration. No Individually Identifiable Information shall be Disclosed to a person or entity, unless directly connected with Agency Program Administration or necessary for compliance with federal or state laws or regulations or pursuant to Consumer permission or authorization.

3.3 Inter-Disciplinary Teams

Members of an Inter-Disciplinary Team may or may not need a Consumer's permission or authorization to share Individually Identifiable Information for the purpose of engaging in identifying, coordinating, planning, arranging, and providing services to a Consumer in order to carry out the Agency's statutory obligations.

Provided no stricter confidentiality laws apply, when the Inter-Disciplinary Team consists only of Employees, Contractors and/or Grantees of the Agency, members of the team are permitted to share Individually Identifiable Information with the team without the permission or authorization of the Consumer.

Permissible Sharing and Disclosure

When an Inter-Disciplinary Team consists of individuals in addition to Employees, Contractors, or Grantees of the Agency, the Employee, Contractor or Grantee members of the team can only Disclose Individually Identifiable Information with the entire team with the permission or authorization of the Consumer.

Specific additional permission or authorization is also needed when stricter confidentiality laws apply such as those related to mental health, HIV, substance abuse, domestic violence, vocational rehabilitation services, or Adult Protective Services.

3.4 "Non-identifiable" Information

Information that does not identify a Consumer may be used for statistical research, reporting, and/or forecasting program needs.

3.5 Public Information

Information defined as public by 1 VSA § 317 or other applicable statute is available to the public. The procedures in the public records statute shall be followed before public information is released.

4. Procedures Related to Sharing or Disclosing Individually Identifiable Information

4.1 Obtaining Informed Permission or Authorization

To ensure permission or authorization is informed, materials about granting permission or authorization, the Agency confidentiality guidelines, and permission or authorization forms shall be in a language and format understandable to the Consumer. Reasonable accommodations shall be made for special needs. Employees, Contractors, and Grantees shall inform Consumers that granting permission or authorization is not a pre-requisite for receiving services that they are entitled to and for which they have applied, although refusal to give permission or authorization may limit the Agency's ability to provide the best quality services.

The Employee, Contractor or Grantee also shall explain the process and benefits of Service Coordination. The Consumer shall be provided with a copy of the most current Agency confidentiality guidelines and relevant permission or authorization form, as well as any other information required by state or federal law.

4.2 Required Elements of Permission or Authorization

Permission or authorization for the Sharing or Disclosure of Individually Identifiable Information shall ordinarily be in writing. If an emergency situation requires granting of verbal permission or authorization, such verbal permission or authorization will be documented as soon as possible thereafter. The permission or authorization shall contain the following elements:

1. The name of the Consumer who is permitting or authorizing to have his or her Individually Identifiable Information Shared or Disclosed;
2. A list or description of the kinds of information to be Shared or Disclosed;
3. An explanation of the purpose for which the permission or authorization is given;
4. A list or description of those authorized to receive the information;
5. A statement that the permission or authorization may be revoked in writing at any time except to the extent that the permission or authorization has already been acted or relied upon;
6. The date, event, or condition upon which the permission or authorization will expire if not revoked earlier;
7. The signature of the Consumer granting permission or authorization, or the name and signature of the person with authority to do so and the date;
8. The signature of the individual explaining the permission or authorization process with his or her position, job title, and date;
9. A space to provide individualized instructions; and
10. A statement that the information will not be disclosed further unless such disclosure is required or allowed by law.

A copy of the permission or authorization shall be provided to all signatories.

Procedures Related to Sharing or Disclosing Individually Identifiable Information

4.3 Consumer Access to Records

Unless prohibited or restricted by federal or state law or regulation, Consumers shall be permitted to view and obtain copies of their Agency records. The Agency shall have written procedures that are consistent with HIPAA which permit Consumers to review Individually Identifiable Information for accuracy and completeness and to request amendments to the information. Employees shall take reasonable steps to present records in a form accessible to the Consumer; including but not limited to large type format or verbal review. A reasonable, cost-based fee may be imposed, provided that the fee includes only the cost of copying, postage, and preparing an explanation or summary of the records as requested by the Consumer. This fee shall be waived if it would prohibit access.

5. Procedures to Protect Confidentiality

5.1. Agency Employees

The Agency shall ensure that all Employees shall be informed about this rule as well as the confidentiality protections afforded Consumers under the state and federal laws that apply to their area of employment. Employees shall sign an affirmation that they were informed and will comply with this rule. This affirmation shall be part of their personnel files. Supervisors shall review this affirmation with Employees during evaluations. Violation of this rule may result in disciplinary action.

5.2 Written Agreements with Grantees and Contractors

The Agency shall ensure its Contractors and Grantees are aware of this rule as well as the confidentiality protections afforded Consumers under the state and federal laws that apply to their services. Each Contractor and Grantee will inform its staff, volunteers, and interns of this rule and require them to comply with it.

5.3 Response to Third Party Non-Agency Requests for Individually Identifiable Information

An Employee shall not respond to requests from outside the Agency for Individually Identifiable Information about a Consumer even to acknowledge that the person is or is not a Consumer, unless required or permitted to by law or authorized by the Consumer in writing.

5.4 Documentation of Disclosure

Disclosures of Consumer Individually Identifiable Information shall be documented if the request does not meet the definition of a permissible Disclosure under Section 3.

Employees shall document in writing any Individually Identifiable Information actually Disclosed, along with the name of the person/entity to whom it was Disclosed and the date of the Disclosure.

5.5 Electronic Information

The Agency shall:

1. Ensure security procedures and policies consistent with this rule and HIPAA are established;

2. Ensure Employees are knowledgeable about the security procedures;

3. Include in its written agreements with Contractors and Grantees the requirements for Sharing and protecting electronic Individually Identifiable Information;

4. Maintain protocols limiting access to Individually Identifiable Information to only those Employees, Contractors, and Grantees who have an actual need to access the information in order to perform their work on behalf of the Agency.

5.6 Information Sharing Guidelines

The Agency shall create and follow written guidelines for the treatment of written, verbal, and electronic information. These shall be available to Consumers, Employees, Contractors, Grantees, third parties, as necessary to improve the overall understanding of this rule. The guidelines shall be updated as necessary.