

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and the University of Vermont, with a principal place of business in Burlington, Vermont (hereafter called "Contractor"). The Contractor's form of business organization is a public not-for-profit institution of higher education. 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 special programs and Medicaid clinical management. 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 \$1,332,085.00
4. **Contract Term.** The period of Contractor's performance shall begin on October 1, 2012 and end on September 30, 2014. The contract may be extended up to two additional years subject to the agreement of both parties.
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 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. Notwithstanding this provision, if a governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this contract are provided, is not in compliance with State and Federal law or is operating with deficiencies the State may terminate this contract immediately and notify the Contractor accordingly. Also, in the event that federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract with no obligation to pay the Contractor from State revenues.
8. **Attachments.** This contract consists of 31 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

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 G
- 7). Attachment F

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

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

MARK LARSON, COMMISSIONER DATE

RUTH FARRELL, DATE
ASS. VP FOR RESEARCH ADMINISTRATION

**ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED**

I. CONTRACTOR DUTIES

A. Contract Liaison

The Contractor will assign one liaison for the State to contact to ensure the assignment of necessary personnel and resources, and to coordinate and manage the activities related to the implementation and management of this contract.

B. State Chief Medical Officer and State Medical Director

1. Responsibilities

Contractor will recruit, hire, and employ two qualified physicians subject to the approval of the Department of Vermont Health Access (State): one to serve as State's Chief Medical Officer (CMO), and the other to serve as State's Medical Director. Responsibilities for each position are outlined in the Project #1 description.

C. Consultation and Technical Assistance

Consultation and Technical Assistance provided under this section will be defined in terms of individual projects. The Contractor will provide qualified personnel matched to the specific requirements of each approved project.

1. Ongoing Projects

In addition to Project #1 governing CMO and Medical Director services, the State has identified and will continue Project #2, as follows:

Consultation and technical assistance regarding psychiatric and substance abuse treatment, including but not limited to concurrent reviews, discharge planning, care management, and psychotropic medications.

This project is described on page 12 of this contract.

The State also has identified and will continue no-cost Project #3, as follows:

Use of DVHA pharmacy claims data to evaluate the Vermont Academic Detailing (VTAD) Program, with the goal of determining the impact of the VTAD Program on local prescribing practices.

This project is described on page 13 of this contract.

2. Initiation of New Projects

a. The State may initiate the process leading to a new project assignment by requesting a proposal from the Contractor. The request will be prepared by the State and will include the following:

- i. Contact Individual
 - ii. Type of Activity (e.g., Applied Research, Basic Research, Technical Assistance, Training)
 - iii. Project Goal(s)
 - iv. Brief Description of Project
 - v. Project Deliverable(s)
 - vi. Estimated Project Duration/Phasing
 - vii. Description of Expected Timeline of Project
- b. The Contractor may also initiate the process leading to a new project assignment by submitting unsolicited proposals. Unsolicited proposals and proposals prepared by the Contractor in response to the State's requests shall include the following:
- i. Principal investigator
 - ii. Project title
 - iii. A detailed work plan, including project description, specific activities and deliverables/products
 - iv. Time estimate required to complete the project and project completion date
 - v. The point of contact responsible for the project for the State and the Contractor
 - vi. Identification of where the work will be performed
 - vii. A list of university personnel who will be working on the project and their qualifications
 - viii. Detailed budget including indirect cost rate (in accordance with the approved Contractor DCA rate), stating a maximum cost to complete the project
- c. Areas of Consultation and Technical Assistance may include, but not be limited to:
- i. Consultation and analysis of health care financing and insurance administration, management operations, and service delivery to produce relevant, research-based information to inform policy, financing and programmatic development for the MCE-related functions of State and the AHS departments that comprise the MCE's healthcare delivery and monitoring system.
 - ii. Analysis of business improvement opportunities, including assessment of current operations with options and recommendations for programmatic improvement to maximize efficiency and reduce redundancy.
 - iii. Identification of opportunities for collaborative activities with other insurers and other states. The goal would be to gain greater efficiencies in program operations and/or service delivery and explore financing through collaboration.
 - iv. Consultation on medically appropriate service delivery options that are concurrently the most cost effective.
 - v. Engaging local community practitioners to solicit ideas for program improvement, including innovation, ideas for reducing duplication and eliminating redundancies, and researching areas for improvements in cost-effective service delivery. Practitioners may include but not be limited to physicians, designated agencies, area health education centers, hospitals, etc.
 - vi. Research on service delivery and program and service financing.

- vii. Compilation and analysis of data from the State-provided business datasets, including compiling and manipulating large and varied datasets to perform complex utilization tracking, utilization and financial trending, and other administrative data exercises.
- viii. Clinical program design, development, implementation, and evaluation.
- ix. Identifying and assessing new developments and emerging trends in program management and clinical practices and research that would have an impact on program and medical policy and/or costs.
- x. Consultation and assistance with reviewing procedural and drug formulary claims coding and reimbursement.
- xi. Consultation and assistance with reviewing and determining requests for covered and uncovered medical services.

3. Review and Finalization of New Projects

Proposals for new projects under this contract shall be presented to and reviewed by the State. After review by the State, and after incorporation of any modifications following negotiations necessary between the parties, the Contractor will finalize the project assignment document. The finalized document will be submitted to the State for final approval and be signed by both the Contractor and the State, indicating payment provisions, ownership of data and any applicable data use agreement, and acceptance of the project specifics before any work can begin.

Changes to the project assignment shall be accomplished by written modification to the project assignment as agreed to by both parties.

4. Project Deliverables

At the conclusion of a project assignment, the final deliverables/products prepared in accordance with what was agreed upon in the executed Project Assignment document will be submitted to the State. Acceptance of the deliverables/products by the State shall represent the Contractor's fulfillment of the project assignment. The State will have sixty days to acknowledge the final deliverables/products or to reject them. Rejection of the final deliverable regarding research projects will not be based on the failure to achieve particular results.

5. Work Product Ownership and Data Use

Notwithstanding the provisions in Attachment F, paragraphs 10 and 12, the parties agree to discuss in the context of each project assignment the ownership and use of the data, research, and other material (to be referred to as "data") collected or produced in connection with the Contract. Before the approval of a consultation or technical assistance project, the parties will agree on how the Contractor will use or disclose the data and whether the Contractor will be permitted to retain the data for use at a later date or for other purposes. The parties acknowledge the principles of academic freedom, the Contractor's general obligation to publish the results of its research, and the need to adhere to state and federal laws and maintain the confidentiality of individually identifiable information.

II. STATE DUTIES

The State shall operate a Medicaid program that is in compliance with applicable State and federal requirements.

The State retains responsibility for maintaining and managing the records of State and for responding to public records requests pertaining to such records.

The State will provide work space and administrative support to the Chief Medical Officer (CMO) and the Medical Director at its facilities at 312 Hurricane Lane, Williston, Vermont, or any location in which the State's operations may move to during the contract period. In addition, the State will supply all computing and telecommunications equipment to be used by the CMO and Medical Director in fulfilling Contractor's responsibilities to the State; this equipment must be returned to the State at the conclusion of the contract or termination of the CMO or Medical Director positions. This equipment will only be provided to the CMO and Medical Director when they are on-site at State facilities.

The State will employ other State staff who will assist the CMO and Medical Director in the performance of their duties.

III. OTHER

A. Removal of Personnel from Contract

The Commissioner of State with the Secretary shall have authority to request the immediate removal from the contract of any personnel for cause or non-cause, including, but not limited to: negligent or willful misconduct that is injurious to beneficiaries; conviction of a felony, or any material breach of any part of this contract, or in the case of a physician, the revocation, restriction, or suspension of the physician's license to practice medicine in Vermont or in any other jurisdiction in which the physician is so licensed for any period of time. Upon removal of a person for cause, and with respect to that person, the State shall have no further payment obligation to the Contractor.

If the State is dissatisfied with the performance of consultation and technical assistance personnel working under this agreement, it may take reasonable steps in consultation with Contractor to notify the personnel of its concerns and work with that employee to correct the problem. If the State remains dissatisfied, the State and Contractor will work together to arrange for a reassignment. Contractor retains the exclusive right to discipline or terminate Contractor employment in accordance with their policies.

B. Employment Clauses

Contractor shall not include any clause in its agreements with the Contractor personnel that would prevent such personnel from accepting employment with the State, or entering into a contractual arrangement with the State or a contractor of the State following the employee's termination of his or her relationship with the Contractor or termination of this Contract.

C. Location of Personnel

Staff supporting the State may be at times asked to work in AHS administrative offices depending on the nature and requirements of the work. At a minimum, staff must be available for meetings in AHS office locations.

D. Security and Electronic Data

Regarding the Contractor's Consultation and Technical Assistance activities, as described in Section I. C., for work using State-provided PHI with identifiers, the Contractor will adhere to the National Institute of Standards and Technology (NIST) Special Publication 800-53 rev 3 or higher moderate baseline security controls, (http://csrc.nist.gov/publications/nistpubs/800-53-Rev3/sp800-53-rev3-final_updated-errata_05-01-2010.pdf with the exception of CA-6 Security Authorization). Due to the extremely sensitive nature of the data, the Contractor will develop data security standard operating procedures to be reviewed annually with all staff and faculty engaged in this work.

F. Actions against Contractor Personnel

The Secretary and the Commissioner of State shall be immediately notified if any personnel working under this contract have a license revoked, suspended or restricted by any state; or the provider loses board certification or eligibility status.

G. Institutional Review Board Approval

Research may include designs for which informed consent must be obtained by participants. Any such proposal must be approved by the Commissioner of State, if applicable, by Contractor's institutional review board, and, if applicable, by the Agency of Human Service's institutional review board.

IV. POINT OF CONTACT

State of Vermont State Agency of Human Services
Mark Larson, Commissioner
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495
Tel: 802-879-5952

Contractor's Technical Lead
Richard "Mort" C. Wasserman, MD, MPH
Professor, Department of Pediatrics
Vermont Child Health Improvement Program
University of Vermont, College of Medicine
1 South Prospect St.
Burlington, VT 05401
Tel: 802-656-3046

Contractor's Administrative Lead
Nicholas Brightman
Research Administrator
Sponsored Project Administration
217 Waterman Building
85 South Prospect Street
University of Vermont
Burlington, Vermont 05405-0160
Phone: (802) 656-3360
Fax: (802) 656-8604

PROJECT #1

State Chief Medical Officer and State Medical Director

1. Description

The Contractor will recruit, hire, and employ two qualified physicians subject to the approval of the State, one to serve as the State's Chief Medical Officer (CMO) and the other to serve as the State's Medical Director. The CMO position will be between 0.75 and 1.0 FTE. The medical director will be 1.0 FTE. Responsibilities for each position are outlined below in "Section 2. Responsibilities."

2. Responsibilities

The Chief Medical Officer shall:

- a. Participate in policy review and development, planning, and implementation, including the development of methods to achieve ongoing improvement in managed care operations and programs.
- b. Particularly in the absence of the medical director or during periods for which additional medical director expertise is needed, support the pre-admission, concurrent review and retrospective review processes, commonly referred to as utilization review. Specifically, render a professional opinion regarding medical necessity using evidence-based literature when available, accepted local standards, and/or Contractor's expert medical opinion.
- c. Consult with and advise managed care staff and operations across the Agency of Human Services (AHS) to achieve ongoing improvement in the integration of behavioral and physical health.
- d. With support from the State and/or other AHS staff, assist with identifying cost-effective alternatives to traditional Medicaid care and cost containment approaches.
- e. Provide medical expertise in critical areas of managed care operations, including but not limited to assisting State to identify and develop best practices in prevention, treatment of multiple co-morbid conditions, and chronic care management.
- f. In collaboration with the Deputy Commissioner of Health Services and Managed Care, serve as a State medical liaison with other departments of the AHS and their medical directors.
- g. Provide clinical leadership in developing an integrated system of care that includes managed care operations, as well as community providers throughout the State.
- h. Advise State staff in identifying and developing clinical initiatives.
- i. In collaboration with the Deputy Commissioner of Health Services and Managed Care, assure coordination of clinical activities at State in a manner that is consistent with applicable state and federal laws, licensing requirements, and accreditation standards.
- j. Participate in State or AHS committees such as utilization review, quality improvement, pharmacy and therapeutics review, and/or joint research projects, as requested.
- k. Identify areas of research in public sector healthcare programs and participate as needed and agreed upon by both parties.
- l. Assure timely completion of all necessary Medicaid documentation as required by state and federal standards.
- m. Organize and direct the Clinical Utilization Review Board (CURB).

The Medical Director shall:

- a. Be directly supervised by the Chief Medical Officer (CMO) and participate as requested by the CMO in policy development, planning, and implementation, including development of methods to achieve ongoing improvement in managed care operations and programs.
- b. Collaborate with the CMO and State staff to identify areas of opportunity and/or concern in the clinical programs.
- c. Support the pre-admission, concurrent review and retrospective review processes, commonly referred to as utilization review. Specifically, render a professional opinion regarding medical necessity using evidence-based literature when available, accepted local standards, and/or Contractor's expert medical opinion.
- d. Request/seek additional clinical information necessary from the treating and/or referring provider in order to complete reviews in a timely manner.
- e. Assure completion of medical necessity reviews in accordance with all applicable state and federal laws.
- f. When evidence-based national criteria for medical necessity are unavailable, research, recommend and/or review any clinical criteria that have been developed by State. If necessary, seek out subject matter experts for consultation.
- g. Assist the Chief Medical Officer as requested.
- h. Contractor will hire support staff and reimburse for related time and travel as reflected in the budget on page 16. This support is specific to the current Medical Director.

Both the Chief Medical Officer and the Medical Director shall:

- a. Uphold State values and standards of conduct, including:
 - i. Demonstrating integrity, respect, and responsiveness when working with patients, families, community partners, and internal staff.
 - ii. Communicating a positive image about State to the public.
- b. Assure completion of medical necessity reviews in accordance with all applicable state and federal laws.
- c. Participate in and support fair hearings, grievances, appeals and other administrative or judicial matters relative to State's clinical operations.
- d. Provide legislative testimony or supporting materials as requested by the Commissioner of State.
- e. Represent the State at various national and regional conferences and meetings as authorized by the Commissioner of State.

3. Conditions of Employment

- a. The CMO and Medical Director will each serve full-time as defined for University faculty with full-time appointments, unless otherwise approved by the State.
- b. When serving as the CMO and Medical Director, those persons will work on behalf of and under the direction and supervision of State. The CMO and Medical Director will arrange their work schedules, vacation days, and paid and unpaid holidays to coordinate with the daily business hours and calendar of State.
- c. Except in the case of unforeseeable emergencies, the CMO and Medical Director will arrange their work schedules, vacation days, and paid and unpaid holidays to ensure at least one of these positions is

present to provide State with medical leadership for all clinical activities within State including prior authorizations, grievance and appeals reviews, care management and other activities as required by Medicaid or assigned by the Commissioner of State.

- d. The Medical Director will be directly supervised by the CMO.
- e. For the services of the CMO and Medical Director, State will pay those costs set forth in Attachment B.
- f. The Contractor will obtain State's agreement before CMO or Medical Director incumbents are replaced by any other individuals.
- g. The CMO and Medical Director will each be considered full-time employees of the Contractor for purposes of salaries, benefits, and all economic terms and conditions of employment, unless otherwise approved by the State. They shall remain on the Contractor's payroll and be entitled to participate in the salary and benefit programs of the Contractor that pertain to retirement, health insurance, dental insurance, disability insurance, and tuition remission.
- h. The CMO and Medical Director will receive all compensation from the Contractor and will receive no additional compensation from State.
- i. The Contractor will pay all salary and benefits to the CMO and to the Medical Director and all related expenses to third parties, including payroll related taxes and FICA. The Contractor will withhold income and other payroll taxes and deductions as appropriate.
- j. The CMO and Medical Director each will be jointly appointed as members of the faculty in one University of Vermont College of Medicine department. They will coordinate and seek collaboration within the COM and with other Contractor entities, as appropriate. The Contractor's Principal Investigator (PI), or designee, will conduct performance evaluations in accordance with the Contractor's policies or as otherwise agreed by State. State's Commissioner will participate in the evaluation process, including providing input to the "Overall Expectations" section of the Contractor's form for reappointment, meeting with the CMO and Medical Director, and consulting with the PI (or designee). State's Commissioner will advise the PI (or designee) of any deficiencies in performance and related corrective actions to be taken as a result of the CMO or Medical Director's service at State.
- k. If State is dissatisfied with the performance of the CMO or Medical Director, it may take reasonable steps in consultation with the Contractor to notify the CMO or Medical Director of its concerns and work with that employee to correct the problem. If State remains dissatisfied, State and the Contractor will work together to arrange for the recruitment and appointment of a replacement acceptable to State, with all agreed upon expenses to be borne by State. The Contractor retains the exclusive right to discipline or terminate the Contractor's employment of the CMO or Medical Director in accordance with the Contractor's policies.
- l. State will advise the CMO and Medical Director of all its organizational rules, regulations, policies, standards of conduct, and safety procedures and the CMO and Medical Director will conform accordingly, with respect both to their own performance and to any responsibilities they may have at State.
- m. Each physician furnished by the Contractor must:
 - i. Hold an unrestricted license to practice medicine in the State of Vermont, or hold an unrestricted license to practice medicine in another state and actively pursue an unrestricted license in Vermont through the Vermont Medical Practice Board;
 - ii. Be selected by the Contractor and approved by the Commissioner of State and the Secretary of the Agency of Human Services; and,

- iii. Serve in a full-time capacity as defined for University faculty with full-time appointments, unless otherwise approved by the State.
- n. The Commissioner of State shall be entitled to interview all final candidates and, with the Secretary of the Agency of Human Services, shall have the ultimate decision whether to accept, reject, or retain any candidate.

4. Gaps in Service Delivery

Either party will notify the other if a gap in Chief Medical Officer or Medical Director services is anticipated or occurs.

The Contractor will timely meet with State to determine the type and extent of services that will be provided during the anticipated or actual absence. The obligation to notify and meet State will be triggered by either the CMO's or the Medical Director's resignation or by the CMO's or Medical Director's absence of more than three consecutive weeks.

5. Medical Records

The CMO and the Medical Director must:

- a. Maintain and update clinical documentation consistent with the State's records policies and procedures and relevant state and federal law, including Medicaid requirements as well as the documentation standards in place at State;
- b. Maintain records related to the clinical program only in the State office; and,
- c. Prepare any compliance reports or take any other action necessary to comply with HIPAA and its implementing regulations.

6. State and Federal Programs

The CMO and the Medical Director shall cooperate with the State's efforts to comply with applicable State and federal program requirements related to medical care (e.g., Medicaid and Medicare). If the CMO or Medical Director have questions regarding the applicability of a State or federal program requirement, the CMO or Medical Director shall inform the State of the question and the State and the Contractor, at the State's direction, will pursue resolution as necessary with the appropriate agency.

PROJECT #2

1. Description

Contractor will provide consultation and technical assistance for concurrent and retrospective reviews, commonly referred to as utilization reviews, for inpatient mental health services and detoxification services. Consultation and technical assistance will not exceed the maximum reflected in the budget for inpatient mental health reviews.

2. Responsibilities

Contractor will provide qualified personnel to compare requests for medical services with established criteria deemed appropriate for such services, review specific cases for consistency with established criteria, and render a professional opinion to the State regarding appropriateness of requested services. Contractor will provide State with a recommendation regarding appropriateness of requested services within one (1) business day of receiving all required information. The State is responsible for all final decisions.

Contractor also will provide consultation and support for care management activities for patients receiving psychiatric and/or substance abuse treatment.

Project #3

1. Description

Contractor will use DVHA pharmacy claims data to evaluate the Vermont Academic Detailing (VTAD) Program.

The goal of the evaluation project is to determine the impact of the VTAD Program on local prescribing practices. The evaluation will compare observed prescribing to what may be considered ideal prescribing both before and after the AD intervention, and also between prescribers who have and have not received the intervention.

2. Responsibilities

The data to be evaluated by the Contractor is pharmacy claims information that has been submitted to DVHA, and that DVHA or its pharmacy benefits manager has de-identified with respect to individually identifying patient information. This data will include the following elements:

- a. The data will be stored on a secure server at the Fletcher Allen Health Care/University of Vermont. The analyses will occur at the Office of Primary Care, the Contractor's School of Medicine, using STATA 10 (Stata Corporation, College Station, TX).
- b. The data will be used to evaluate the impact of the Vermont Academic Detailing (VTAD) Program on local prescribing behavior. Specifically, the evaluation will help assess whether the VTAD is helping Medicaid patients by improving the use of evidence-based prescribing approaches.
- c. The results of each evaluation project will be shared with the State in a written summary.
- d. The results of the evaluation may be published in a peer-reviewed medical journal and in the Vermont Academic Detailing Program's Annual Report.
- e. The data will not be used for any purposes other than those described above.
- f. The information will be retained for a period of no more than two months unless Contractor and State agree to other evaluation projects permitted by law.

This project is a no-cost project, i.e., the State is not required to reimburse Contractor or any team members for the activity they undertake in connection with this project.

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 products or 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:

I. Principal Investigator

Dr. Richard Wasserman will be Principal Investigator (PI) for all projects and activities approved under this Contract. The PI will provide oversight, technical assistance, and consultation and will ensure project integrity and project completion on time and within budget. Costs for PI responsibilities will not exceed \$76,739 during the two (2) year period covered by this Contract, and will be paid quarterly based upon actual expenses.

II. Project #1: Chief Medical Officer and Medical Director

Costs for the State Chief Medical Officer (CMO) and State Medical Director will not exceed \$1,240,313.00 for the two-year contract period. Costs will include salary, fringe, direct personnel (expenses, in-state and out-of-state travel), operating and indirect costs. Out-of-state travel expenses for the CMO and Medical Director must be approved in advance of the travel by the Commissioner of DVHA; the Contractor will be reimbursed for mileage, food, and lodging expenses at the rates established by the Contractor.

The State will pay the Contractor a maximum of \$155,039.12 per quarter for the services provided in Attachment A, Section B, and the Project #1 description. Payment by State is contingent upon receipt and approval of a statement of the services provided by the CMO and Medical Director in the previous quarter. This quarterly payment will be prorated for the quarter in which the CMO begins working for the State. The CMO and Medical Director will assure completion of medical necessity reviews in accordance with all applicable State and federal regulations regarding Medicaid clinical reviews. The CMO and Medical Director will work at the direction of the State to complete medical necessity reviews within a timeframe that enables the State to adhere to all applicable State and federal laws as reflected in the following Code of Federal Regulations (CFR):

42 CFR §438.210 (d) titled "Timeframe for Decisions", and 42 CFR §438.408 (b) titled "Specific Timeframes".

These can be found online from the Electronic Code of Federal Regulations website at:

<http://ecfr.gpoaccess.gov>

Or the direct internet link to Title 42:

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=7ef067068fd5790636ada6d541f3976e&c=ecfr&tpl=/ecfrbrowse/Title42/42cfrv4_02.tpl

The deadlines associated with State regulations concerning Medicaid clinical reviews mirror the deadlines found in Federal regulations. For reference, they can be found at:

<http://humanservices.vermont.gov/on-line-rules/dvha/medicaid-covered-services-7100-7700/view>

If the State is unable to adhere to the requirements of state and federal laws due to a delay in the completion of medical necessity reviews by the CMO or Medical Director, the Contractor will forfeit \$2,000 for the first such delay, and \$5,000 for each instance of all subsequent delays (not \$5,000 aggregate.) Such assessment shall not be made to the extent that the failure, in the State's judgment, reasonably results from:

- Unforeseeable catastrophic events experienced at the Contractor local and corporate facilities,
- Unforeseeable catastrophic events experienced by State which have a material effect on the Contractor, or;
- Complying with any directions of the State or its employees regarding changes to the scope of work.

Reimbursement will be based on the full-time equivalency (FTE) of the CMO. The budget for this agreement assumes a 1.00 FTE for this position. In the event a CMO is hired to be available at any less than 1.00 FTE, the Contractor shall bill at rate based upon the following formula: the CMO's full time annual salary x the percent Full Time Equivalency.

For example, if the CMO's annual salary is \$160,000.00 and their FTE is 0.85, the Contractor will base their invoices on an annual salary of \$136,000.

III. Consultation and Technical Assistance Projects

A. Project #2

Contractor will bill State quarterly for actual costs, the total of which cannot exceed \$15,033 during the two (2) year period covered by this Contract.

Contractor must provide State with a recommendation regarding appropriateness of requested services within one (1) business day of receiving all required information. If Contractor fails to provide a recommendation within this required period, Contractor will forfeit 10% of the quarterly payment associated with this project.

Such assessment shall not be made to the extent that the failure can be attributed to:

- Unforeseeable catastrophic events experienced at the Contractor's local and corporate facilities,
- Unforeseeable catastrophic events experienced by State which have a material effect on the Contractor, or;
- Complying with any directions of the State or its employees regarding changes to the scope of work.

B. All New Projects

Each individual project as defined in Attachment A, Section C, shall require a separate budget, payment provisions for funds needed to carry out the project, and performance measures and guarantees. All budget, specific payment provisions, and performance measures and penalties must be approved through a Contract amendment prior to the start of work. The budget will include direct and indirect costs as required for the project.

Payment provisions for individual projects may be either on a fixed-price per deliverable or cost reimbursement basis as mutually agreed.

The State will make payments to the Contractor upon receipt of quarterly signed bills/invoices to the State in accordance with the budget line items specified in the budgets for the individual projects as defined in the Detailed Work Plans described in Attachment A.

In all cases, should the parties agree to terminate the Contract, in whole or in part, prior to its completion, the State shall reimburse the Contractor for all approved unreimbursed expenses and non-cancellable encumbrances reasonably or necessarily made prior to the effective date of termination, such reimbursement, in combination with prior payments, not to exceed the total specified for the Contract or project. Conversely, Contractor shall refund any amount paid by State in excess of all expenses and non-cancellable encumbrances reasonably or necessarily made prior to the effective date of termination. In the event of early termination, Contractor shall provide State with copies of work in progress under the agreement. Upon notice of termination contractor will stop all work unless otherwise directed by the Commissioner of DVHA.

The State will not pay invoices if not received within six months of the delivery of services or contract completion.

The Contractor will submit a signed and dated bill/invoice for services rendered under Section I (Principal Investigator), Section II (Project #1: Chief Medical Officer and Medical Director) and Section III (Consultation and Technical Assistance Projects) of these Payment Provisions. The invoice shall be printed on the Contractor's official letterhead, reference this contract number, include the date of invoice, remit address, the total amount billed, be signed off by an authorized representative of the Contractor, and sent to:

Business Office
 Department of Vermont Health Access
 312 Hurricane Lane, Suite 201
 Williston, VT 05495

The State will remit all payments to:

Grant and Contract Administrative Services
 223 Waterman Building
 University of Vermont
 Burlington, VT 05405

Contract Budget

	P.I.	MCD Director (1.0 FTE)/	Inpt. MH	
		CMO (1.0 FTE)	Reviews	
Total Personnel	\$ 57,482	\$ 892,373	\$ 11,261	
Total Operating	\$ - __	\$ 36,700	\$ - __	
Total Indirect	\$ 19,257	\$ 929,073	\$ 3,772	
Grand Total	\$ 76,739	\$ 1,240,313	\$ 15,033	
Total Budget				\$1,332,085

**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, as amended, 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.
 - d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.
- 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.

- 19. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

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 Department of Vermont Health Access (“Covered Entity”) and the University of Vermont (“Business Associate”) as of October 1, 2012 (“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”), as amended by subtitle D of the Health Information Technology for Economic and Clinical Health Act.

The parties agree as follows:

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

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

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

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

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

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

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

3. **Business Activities.** Business Associate may use PHI received in its capacity as a “Business Associate” to Covered Entity if necessary for Business Associate’s proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as “Business Associate” to Covered Entity for Business Associate’s proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if (a) Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which

it was disclosed to the person and (b) the person notifies Business Associate, within three business days (who in turn will notify Covered Entity within three business days after receiving notice of a Breach as specified in Section 5.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in this Section must be of the minimum amount of PHI necessary to accomplish such purposes.

4. **Safeguards.** Business Associate shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

5. **Documenting and Reporting Breaches.**

5.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI as soon as it (or any of its employees or agents) become aware of any such Breach, and in no case later than three (3) business days after it (or any of its employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

5.2 Business Associate shall provide Covered Entity with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it.

5.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce does not pose a significant risk of harm to the affected individuals, it shall document its assessment of risk. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low risk of harm. When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity.

6. **Mitigation and Corrective Action.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity.

7. **Providing Notice of Breaches.**

7.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR §164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies

shall be borne by Business Associate.

- 7.2 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to Covered Entity.
- 7.3 The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).
- 7.4 Business Associate shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR §164.406.
8. **Agreements by Third Parties.** Business Associate shall ensure that any agent (including a subcontractor) to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity agrees in a written agreement to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. For example, the written contract must include those restrictions and conditions set forth in Section 14. Business Associate must enter into the written agreement before any use or disclosure of PHI by such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of PHI to any agent without the prior written consent of Covered Entity.
9. **Access to PHI.** Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.
10. **Amendment of PHI.** Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.
11. **Accounting of Disclosures.** Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

12. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity upon Covered Entity's request in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

13. **Termination.**

13.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 17.7.

13.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate this Contract without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate this Contract without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under this Contract, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

14. **Return/Destruction of PHI.**

14.1 Business Associate in connection with the expiration or termination of this Contract shall return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this Contract that Business Associate still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI. Business Associate shall certify in writing for Covered Entity (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI. Business Associate is to provide this certification during this thirty (30) day period.

14.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI.

15. **Penalties and Training.** Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality, and security of PHI.

16. **Security Rule Obligations.** The following provisions of this Section apply to the extent that Business

Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

- 16.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.
- 16.2 Business Associate shall ensure that any agent (including a subcontractor) to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any agent without the prior written consent of Covered Entity.
- 16.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an agent, including a subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than three (3) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.
- 16.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

17. Miscellaneous.

- 17.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract, the terms of this Agreement shall govern with respect to its subject matter. Otherwise the terms of the Contract continue in effect.
- 17.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.
- 17.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.
- 17.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule) in construing the meaning and effect of this Agreement.
- 17.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.
- 17.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI

it receives from Covered Entity or creates or receives on behalf of Covered Entity under this Contract even if some of that information relates to specific services for which Business Associate may not be a “Business Associate” of Covered Entity under the Privacy Rule.

17.7 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 1/31/11)

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 United Way/Vermont 211. 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 Department 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 Department 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.

Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*.

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 Protection Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911(c)(3)).
9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving

vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

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

The Contractor shall not sell or copyright a work product or item produced under this agreement 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. Nothing herein shall entitle the State to pre-existing Contractor's materials.

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

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

(HIPAA) standards.

The State will not supply e-mail accounts to the Contractor.

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.

The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

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.

ATTACHMENT G

MODIFICATIONS FOR ACADEMIC WORK PRODUCTS

1. Notwithstanding Attachment F, paragraph 10 is modified as follows:

The parties agree that ownership of all data, papers, reports, forms, or other material collected or produced by the grantee, under this grant, (the "work product") shall belong to the grantee. Upon a request made by the State, the grantee shall provide, free of cost, copies of all such work product no later than 30 days from the date of the request. The State shall have a nonexclusive, nontransferable, irrevocable, royalty free paid-up license to use or have used the work product for or on behalf of the State during the pendency of the agreement and thereafter. The State may provide the work product to its contractors, grantees, community partners, and to other local, state, and federal governmental entities for their non-commercial use.

2. The parties also agree that the following clause will be included in all publications and any other material that are distributed in printed form or are posted or disseminated electronically.

Although this work product was funded in whole or in part with monies provided by or through the State of Vermont, the State does not necessarily endorse the researchers' findings and/or conclusions. The findings and/or conclusions may be inconsistent with the State's policies, programs, and objectives.

AHS revised 8/31/10