

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and Maximus Health Services, Inc., with a principal place of business in 11419 Sunset Hill Road, Reston, Virginia 20190 (hereafter called "Contractor"). The Contractor's form of business organization is a Corporation. The Contractor's local address is 101 Cherry Street, Suite 320, Burlington, Vermont 05401. 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 enrollment, benefit counseling, and member services for Green Mountain Care Member Services. Detailed services to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$4,467,045.04
4. **Contract Term.** The period of Contractor's performance shall begin on December 15, 2011 and end on June 30, 2013.
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 60 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 that pose immediate jeopardy to a child's health, welfare or safety, the State may terminate this contract immediately and notify the Contractor accordingly. Also, in the event that federal funds supporting this procurement grant become unavailable or are reduced, the State may cancel this contract upon written notice and shall be obligated to pay only for those services provided by Contractor.
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:

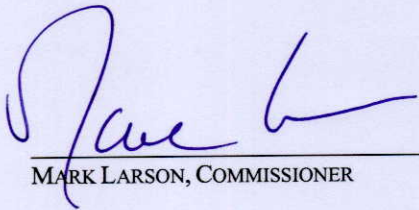
- 1). This document

- 2). Attachment C
- 3). Attachment A
- 4). Attachment B
- 5). Attachment E
- 6). Attachment F

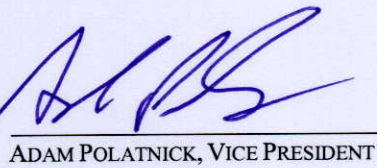
**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.**

**BY THE STATE OF VERMONT:**

**BY THE CONTRACTOR:**

  
MARK LARSON, COMMISSIONER

12-27-11  
DATE

  
ADAM POLATNICK, VICE PRESIDENT

12/23/11  
DATE

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

1. OVERVIEW

The Contractor will inform the eligible population and other interested individuals about the State health care programs including Primary Care Plus. This includes information about program policies, time lines and benefits.

- A. Contractor will be responsible for performing the following member services functions, following specific procedures that have been developed and agreed upon by the State and the Contractor for each of these functions:
- Update computer systems with changes in address, phone numbers, job and wage information, household members, pregnancy end dates, births, low income subsidy application dates and social security numbers for Health Access Eligibility Unit (HAEU) cases only; for all other changes, send a message to the HAEU eligibility specialist.
  - Update computer systems for district office (DO) cases with reports of pregnancy end dates, births and low income subsidy application dates; for all other changes, send a message to the eligibility specialist in the appropriate district office.
  - Submit requests for replacement Green Mountain Care cards when requested for HAEU cases only; for all other cases, send a message to the eligibility specialist in the appropriate district office.
  - Answer questions about the relationship between Medicare/Medicaid for dual eligibles.
  - Respond to requests for applications, questions about covered services, and basic eligibility questions. Assist members in understanding notices issued by the State.
  - Enter or report beneficiary income changes.
  - Provide beneficiaries with information and assistance regarding spend downs.
  - Verify and update Third Party Liability information into the State eligibility system. Answer questions regarding program premiums.
  - Assist members in resolving billing issues when received in writing or over the phone.
  - Answer covered services questions and research and respond to beneficiary when necessary, within one business day.
  - Respond to Catamount related questions and refer beneficiaries to Catamount Plans as needed.
  - Assist members with their search for and selection of providers.
  - Respond to questions regarding "wraparound" benefits and how to access them.
  - Answer questions regarding the status of prior authorization and explain the requirements for prior authorization.
  - Advise beneficiaries as to how to obtain transportation.
  - Educate beneficiaries and other interested parties about other services that might be available to them, i.e. Healthy Babies, Kids, and Families; Home and Community-Based Waiver services; and the State Hi-tech program.
  - Facilitate corrections when State and Contractor information systems are not in synch, regarding beneficiary eligibility.
  - Perform telephonic outreach to new PC Plus members as agreed upon by the State and Contractor.
  - Enroll beneficiaries between the ages of one and seventeen with a Dental Home provider when applicable and assist beneficiaries with identifying providers.

- Enroll Catamount Health Premium Assistance (CHAP) eligibles into their Catamount Health plan of choice and data enter transfers between plans into the State eligibility system.
- Provide orientation to Primary Care Plus enrollees through the enrollment process;
- Provide welcome calls to individuals enrolled into Primary Care Plus who are new to managed care and have not had a managed care orientation, and enroll by mail or are auto assigned;
- Handle complaints and assist in resolving beneficiary problems;
- Process requests for Fair Hearings. For any Fair Hearing requests regarding a beneficiary's eligibility determination or premium issue, Contractor will send a message to the eligibility specialist in the appropriate office to initiate the process.
- Provide information about the Exception Request process and mail forms when requested.

B. The Contractor will enroll eligible individuals into health care programs managed by the State following specific procedures that have been developed and agreed upon by the State and Contractor.

- Provide eligible individuals with adequate, unbiased information necessary to select a health plan and primary care provider.
- Enroll eligible individuals with health plans.
- Assist eligible individuals with selection of a primary care provider.
- Update consumer file in the State eligibility system with enrollment and other beneficiary changes.
- Inform beneficiaries of their rights and responsibilities under the program.
- Produce and distribute enrollment packages, reminder notices and enrollment confirmation letters, which serve as temporary identification cards.
- Collect, monitor and report data regarding HelpLine activities.
- Coordinate with State staff and health plan staff to develop efficient and organized education and enrollment processes.
- Provide telephone services including benefits counseling.
- Provide enrollment counseling and functions as defined in this contract.

## 2. TELEPHONE ACCESS

The Contractor must provide adequate live telephone coverage by trained staff to meet the needs of eligible plan members. Telephone coverage should be from 7:45 am to 4:30 p.m., Monday through Friday, except when any of the following State holidays fall on a weekday: New Year's Day, Martin Luther King Day, Presidents Day, Town Meeting Day, Memorial Day, Independence Day, Bennington Battle Day, Labor Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day.

The Contractor must provide TTY communication and relay service, and language translation as necessary to facilitate communication. Telephone line staffing must be adequate to meet or exceed the performance standards defined herein. Contractor agrees to relinquish back to the State the use of 1-800-250-VHAP line, and any other 800 lines or local numbers that consumers utilize, at no cost to the State upon the termination of the contract. The Contractor will be responsible for telephone charges for the MAXIMUS business line and the Language Line.

## 3. INFORMING MATERIALS

Any outreach and educational materials must be approved by the State in advance of distribution. It is

to be expected that some printed materials will be written and produced by the State, and other material will be written and produced by the Contractor. At the State's direction, the Contractor is responsible for writing, updating and producing the enrollment kit materials. The enrollment kit must be updated on a timely basis, and within the scope of available funds, to accurately reflect changes in enrollment policies, procedures, and schedules.

#### 4. EDUCATION ACTIVITIES

Contractor shall be responsible for educating enrollees and other interested individuals (and Member Services Representatives) regarding program policies and benefits. Educational activities may be conducted via mail, by telephone and through in-person meetings at the Green Mountain Care Member Services office (walk-ins). Contractor shall provide information and assist enrollees (and Member Services Representatives) in understanding all facets of the State's health care programs, including the following:

- General concepts about Medicaid, Dr. Dynasaur, VHAP and of health care delivery in a managed care model;
- How to access services under all State health care programs;
- Services covered by the different health care programs offered by the State, to include services that are not covered.
- General information regarding the CHAP enrollment process and participating plans;
- General concept of the Dental Home initiative and help locate a dental provider;
- The role and responsibilities of the primary care provider;
- The importance of selecting a health plan and a primary care provider;
- Beneficiary rights, including appeal and fair hearing rights, confidentiality rights and availability of the Office of the Healthcare Ombudsman;
- Beneficiary responsibilities, including necessity of obtaining prior authorization and proper utilization of emergency services;
- Cost sharing (program premiums, co-payments, etc.) responsibilities;
- Responsibilities of the plan member to follow health plan procedures for seeking emergency and non-emergency services; making, keeping, canceling appointments with PCP/specialists; seeking hospital admissions; and circumstances in which self-referral is appropriate; and
- Information about the Automatic Assignment Process for Plans and PCP's.

In addition to education activities at the time of enrollment, Contractor shall continue to provide assistance to enrollees throughout the contract regarding program benefits, policies and procedures. Contractor should assist clients in understanding and resolving initial enrollment problems that may arise with regard to health plan policies or their PCP.

Contractor shall staff a toll-free line to assist enrollees and other interested individuals in understanding program benefits and policies and to respond to questions. Eligible individuals should have the ability to pick a health plan, a PCP, a CHAP plan and dental home provider over the telephone.

#### 5. ENROLLMENT ACTIVITIES

Contractor shall be responsible for enrolling individuals with health plans and assisting individuals with the selection of PCPs. Determination of financial eligibility will be performed by the Department of Children and Families (DCF) or other State designated organization. Contractor must assist eligible individuals with selection of a plan (unless automatically assigned). The Contractor shall extend the date to complete the

enrollment process when directed to do so by the State.

Contractor shall be responsible for enrolling individuals who are eligible for CHAP into their plan of choice by phone; referring callers with covered services questions to the plans directly. Contractor shall also capture dental home enrollments over the phone.

#### 6. ENROLLMENT PROCESS

The Contractor must inform individuals about all health plans available under contract with the State, as is appropriate based on eligibility, within their geographic area or area of expressed interest. To the extent possible, this information shall be provided in an objective, non-biased fashion that neither favors nor discriminates against any health plan or health care provider. Member Services Representatives are prohibited from offering personal opinions or experiences about any plan or health care provider.

Contractor must send a pre-printed Plan/PCP and Dental Home Preference Form to the eligible individual along with an enrollment booklet, and any general information brochures which the State has developed. Eligible individuals will return their preference form in a pre-paid envelope to the Contractor. Within twenty-one (21) days of the mailing of the initial plan preference form, the Contractor shall contact non-responsive eligibles, via mail or telephone, in order to encourage plan selection.

Contractor shall be responsible for enrolling individuals who are eligible for CHAP and the Dental Home program into their plan or provider of choice by phone.

#### 7. AUTOMATIC ASSIGNMENT OF ELIGIBLE TO HEALTH PLANS

In the event that the potential enrollee fails to make a health plan selection within thirty (30) days of the first contact or the individual has paid a premium and must be enrolled prior to the 30<sup>th</sup> day, and the State has defined enrollment for that individual to be mandatory, the State will apply an automatic assignment algorithm to select a plan for the eligible member. Contractor shall maintain automatic assignment rate of 25% or less for individuals that are provided a minimum of 30 days to enroll.

#### 8. NOTICES

The Contractor shall notify the State of the eligible member's chosen PC Plus primary care provider (PCP) and/or Dental Home provider. The Contractor shall send a confirmation notice to the eligible enrollee. The notice serves as a temporary ID card and provides key information.

The Contractor will also notify members of their reinstatement into a managed care plan when a period of ineligibility has been ninety (90) days or less. The State will provide a daily file with the names of individuals who require such notice. The Contractor and State will collaborate on the text for this letter with final approval resting with the State.

#### 9. ASSISTANCE WITH SELECTION OF A PCP AND FORMS

Contractor shall assist enrollees with selection of a primary care provider.

Contractor shall offer eligible members assistance in the completion of all necessary forms. Contractor shall review returned materials to confirm the accuracy and completeness of information provided, and follow up with enrollees in circumstances where returned forms are incomplete.

10. PLAN/PCP PREFERENCE FORM

The Contractor shall send a personalized plan/PCP and Dental Home preference form to the head of household. At a minimum the following shall be included on the plan/PCP preference form: eligible individual(s) head of household name, household address, phone number (if applicable), identifying information, and Contractor toll-free telephone number.

The Contractor shall distribute to all eligible members by mail, or other suitable means, a plan/PCP and Dental Home preference form and accompanying enrollment materials. The mail schedule will allow individuals at least thirty calendar (30) days to make a choice. The Contractor shall be allowed a minimum of five (5) business days from receipt of the monthly member cohort file to mail the enrollment kit. For newly eligible individuals sent on a daily basis, the Contractor will have one (1) business day to mail the enrollment kit.

12. PCP TRANSFERS

Contractor shall assist PC Plus members that wish to switch their primary care provider. Eligible Primary Care Plus members may switch PCP's at any time.

13. COORDINATION ACTIVITIES

Contractor shall coordinate with State agencies, the fiscal intermediary, and designated State contractors to ensure efficient operation of the education and enrollment functions, accurate flow of information and development of approaches to improve education and enrollment processes.

14. STAFFING REQUIREMENTS

The Contractor must employ sufficient staff to meet the needs of the eligible population. The Contractor must employ a sufficient number of Member Services Representatives to sufficiently handle the volume of incoming calls. The Contractor must employ a sufficient number of Member Services staff to meet the needs of members in all areas of the State. Staffing levels may be amended in response to changes in volume of work that impact the Contractor's ability to meet performance standards. The Contractor and the State shall evaluate staff productivity, average call length, and forecasted work volume in determining amendments to staffing levels. Any position supporting amended staff levels shall be reimbursed in a manner that is consistent with policies for current staff holding the same or similar positions.

Contractor must designate a senior staff member to serve as full-time Project Director. The Project Director must be an employee of the Contractor, dedicated full-time to this contract. The Project Director should possess extensive experience in the following areas:

- Enrollment counseling/benefits counseling
- Customer service/relations
- Managed health care
- Staff management

Should a change in Project Director become necessary, Contractor must obtain State approval for the replacement.

Contractor must employ or contract with other key personnel necessary to successfully develop and implement the program.

Contractor should employ Member Services Representatives that exhibit strong communications skills, interpersonal skills and aptitude for understanding complex issues.

Contractor shall give prior notice to the State of any plans to add or reduce staff prior to said actions, which must be approved by the State.

#### 15. STAFF DEVELOPMENT AND TRAINING

The Contractor shall work with the State staff on the development of the training for Member Services Representatives. The Contractor must develop and maintain an ongoing training program to ensure that all Member Services Representatives are sufficiently informed regarding program policies and procedures and their responsibilities as benefit counselors.

Aged, Blind and Disabled beneficiaries must enroll in managed care. Contractor must adopt a staff training program that educates employees regarding the special needs of this enrollment group.

The Contractor is prohibited from offering or receiving any gift or gratuity to or from any officer or employee of the State's contracted health plans.

#### 16. COMMUNICATION/DATA EXCHANGE

The Contractor must be able to communicate electronically via email with attachments and file transfer with the State, and the fiscal intermediary. The Contractor is expected to coordinate with the fiscal intermediary to develop protocols for the electronic transfer of information between the fiscal intermediary and Contractor, when appropriate. Enrollment activities and changes in beneficiary information are made in the State's automated eligibility system. In addition, the State will provide the Contractor with access to the MMIS System, the PBM system, OnBase, VT Notices, and other State and contractor databases as needed to support member services activities. The Contractor is responsible for any other information systems.

The State will electronically transmit to the Contractor a daily notice file that will include notification of initial enrollment, reminder for outreach, enrollment confirmation, auto assignment, reinstatement, Primary Care Plus PCP change, and dental enrollment notifications. The State will electronically transmit a monthly cohort file to the Contractor of individuals being asked to join managed care.

The Contractor will have the capability to receive from the fiscal intermediary, on a regular basis, electronically transmitted files of PCP's. The Contractor will electronically transmit a truncated Primary Care Plus PCP file to the State on a weekly basis.

#### 17. REPORTING REQUIREMENTS

The Contractor must design and maintain, at a minimum, the following information reports and logs as part of its overall contractual duties. The format and frequency of these reporting activities may change by mutual agreement. The State reserves the right to request additional or different reporting information from the Contractor throughout the term of the contract, on either an ad hoc or regular basis. Weekly reports will be due to the State by the Thursday of the following week. Monthly reports will be due to the State by the 15<sup>th</sup> of the following month.

a) WEEKLY



- Summaries of telephone activity, including information that shows the number of incoming and outgoing calls, average time to answer and duration of calls during the period.
- Log of complaints received and corresponding actions to respond to each complaint.

b) MONTHLY

- Summaries of telephone activity, including information that shows the number, duration, and type of calls received during the period.
- Number of confirmation letters sent to all beneficiaries who have enrolled into Primary Care Plus broken down by program (i.e., VHAP/Medicaid).
- Summary of types and numbers of communications (mail, phone, etc.)
- Any change in staffing levels by task and function for work performed or anticipated to guide the State in determining staffing levels.
- Other elements as agreed upon by the State and the Contractor.

18. PERFORMANCE STANDARDS

A. **Timeliness/Turnaround times**

The Contractor must meet and document these minimum standards for mailing, enrollment, and data transferred to the State and the Health Plans as defined below:

- For individuals whose eligibility segments are transferred to the Contractor on a daily basis by the State, the Contractor has one (1) business day to send Plan/Primary Care Plus Preference Form, Enrollment Booklet, and related materials to eligible individuals once information is transmitted by the State.
- For the monthly cohort, the Contractor has five (5) business days to send Plan/PCP Preference Form, Enrollment booklet, and related materials to eligible individuals once the information is transmitted by the State.
- The Contractor must enroll an eligible member within two (2) business days after receipt (date stamped) of complete preference form.
- The Contractor has two (2) business days to mail Plan/PCP verification letter to an enrollee upon receipt of a confirmation transaction from the State.
- Contractor has two (2) business days to return incomplete Plan/PCP preference forms (this excludes failure to pick a Plan or PCP).
- Contractor has two (2) business days from date of request to provide additional written information to be sent to an eligible individual.
- Contractor must make a verifiable follow up contact (telephone call or letter) to non-responsive eligible members within twenty-one (21) days after the initial enrollment packet was mailed.
- Contractor will mail or e-mail any requested applications, forms and/or informational material requested by beneficiaries or interested parties within two (2) business days, as measured by periodic assessments in staff status meetings and by assessment of complaints received by the State.

- Contractor will process beneficiary requests for a Fair Hearing, as defined in procedures and guidelines, within one working day of the initial request.
- Contractor will be responsible for providing any follow-up communication, in writing or by telephone within one (1) business day of the initial inquiry, as measured by periodic assessments, by the State, of activity documentation and/or phone tracking system.
- Contractor will complete beneficiary informational updates, as appropriate for either the HAEU or individual district offices, within ten (10) calendar days of the initial request for a change, as measured by periodic assessments, by the State, of activity documentation and/or phone tracking system.
- Contractor will complete updates on third party and other insurance information within ten (10) calendar days of the initial request for a change, as measured by periodic assessments, by the State, of activity documentation and/or phone tracking system.
- Contractor will provide accurate and clear information about covered benefits, program requirements and recipient status, as measured by periodic random phone calls from State staff.

**B. Telephone Response**

The Contractor must provide adequate live operator telephone coverage. The use of automated voice response or automated attendant is acceptable to supplement live operators during peak periods. The Contractor must meet the following performance standards related to the responsiveness of staffed telephone lines for up to 1,500 calls per day:

- 100% of all incoming calls must be answered within 25 seconds;
- 95% of held calls be transferred to a live operator within 2 minutes; and
- 100% of held calls will be transferred to a live operator within 4 minutes.
- Lost call abandonment rate shall not exceed 10%.

**19. STATE RESPONSIBILITIES**

The State shall assume the following responsibilities with regard to this contract:

- Notify the Contractor in a timely manner of all pertinent changes in State policy, procedures or operational systems that affect or depend upon Contractor operations or activities.
- Provide to the Contractor, in a timely manner, any information regarding State or federal regulations, policies or statues, or changes thereof, that are relevant to the Contractor's performance.
- Provide to the Contractor any other information that the State deems relevant in order to fulfill the duties required by this contract
- Designate a Project Manager to represent the State on all matters pertaining to the contract, including monitoring Contractor compliance with contract terms, monitoring and Contractor's progress and quality improvement initiatives, and resolving issues related to program implementation and operation.

- Reimburse the Contractor on a monthly basis in accordance with procedures defined in the contract, upon receipt of a properly completed invoice.
- Provide technical assistance in resolving problems associated with data exchanges between Contractor and State.
- Send daily roster of potential program enrollees, according to a transmission method, file formats and specifications defined by State and Contractor.
- Perform final determination for all requests for exemption from enrollment in the VHAP program.
- Process disenrollments and auto assignments.
- Provide Contractor with current Medicaid provider lists, as necessary.
- Provide Contractor with information and otherwise assist Contractor in responding to complex inquiries from clients regarding State policies.
- Provide Contractor with access to the State systems including, but not limited to, MMIS, ACCESS, OnBase, VT Notices, and the PBM contractor system. Contractor is responsible for coordinating all training related to these systems.
- Provide Contractor with monthly enrollment reports to track enrollment and performance indicators.

20. MEMBER SERVICES TRANSITION

In the event that the State transitions to a new contractor following the expiration of this agreement or its termination by the State for cause or by Contractor for convenience, Contractor agrees to make commercially reasonable accommodations to aid in the transition to the new Contractor. Further details about Member Services Transition are described in Section 9 of Attachment B.

21. FRAUD AND ABUSE

The Contractor shall require its employees, contractors, and grantees which provide goods or services for the plan to furnish, upon reasonable request, to the State, specifically the Department of Vermont Health Access and the Attorney General any record, document, or other information necessary for a review, audit, or investigation of program fraud or abuse, and shall establish procedures to report all suspected fraud and abuse to the Department of Vermont Health Access and the Attorney General.

22. INSPECTION OF WORK PERFORMED

The Department of Vermont Health Access, the Agency of Human Services, Vermont Auditor of Accounts, the U.S. Department of Health and Human Services, the Health Care Financing Administration, the General Accounting Office, the Comptroller General of the United States, the Office of the Inspector General, Medicaid Fraud Control Unit of the Office of the Attorney General or their authorized representatives shall, during normal business hours, have the right to enter into the premises of the Contractor and/or all subcontractors and providers, or such other places where duties under the

contract are being performed, to inspect, monitor, or otherwise evaluate the work being performed.

Such inspections will include, but not be limited to, the CMS-mandated annual operational and financial health plan reviews and the CMS-mandated independent evaluation of the Vermont Health Access Plan program. All inspections and evaluations shall be performed in such a manner as to not unduly delay work.

23. CONFIDENTIALITY OF INFORMATION

The Contractor agrees to comply with the requirements of AHS Rule No. 96-1 concerning access to information. The Contractor shall agree that all information, records, and data collected in connection with this contract shall be protected from unauthorized disclosures. In addition, the Contractor shall agree to guard the confidentiality of recipient information. Access to recipient identifying information shall be limited by the Contractor to persons or agencies which require the information in order to perform their duties in accordance with this contract, including the Department of Vermont Health Access, the U.S. Department of Health and Human Services, and other individuals or entities as may be required by the State.

Any other party shall be granted access to confidential information only after complying with the requirements of State and Federal laws and regulations pertaining to such access. The State shall have absolute authority to determine if and when any other party has properly obtained the right to have access to this confidential information. No thing herein shall prohibit the disclosure of information in summary, statistical, or other form which does not identify particular individuals

**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, for services actually performed, up to the maximum allowable amount specified in this agreement. State of Vermont payment terms are Net 30 days from date of invoice, payments against this contract will comply with the State's payment terms. 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 shall reimburse Contractor for reasonable and necessary expenses incurred in the performance of this contract not to exceed the maximum dollar amount of \$4,467,045.04 for the contract period December 15, 2011 through June 30, 2013. These payment provisions allow for retroactive payments to cover the period between November 1, 2011 and December 14, 2011. Travel expenditures for local travel will be paid at the rates specified by the State of Vermont. Postage expenses are a direct cost and not be subject to General and Administrative costs or earnings factor.

The Contractor shall make every effort to submit invoices on or about the 15<sup>th</sup> of each month for the prior month's expenses. Such invoices will not require supporting documentation for processing, but expenses shall total no more than allotted monthly amounts and shall be broken out by line item as follows:

- Salaries and Fringe
- Office Supplies and Equipment
- Printing
- Other Direct Costs
- Subtotal
- Indirect Costs and Fee
- Total
- Postage
- Gross Billing
- Less Retainage @ 6%
- NET BILLING

If it is mutually determined by the State and Contractor under Attachment A, Section 14 that the staffing levels need to be reduced or expanded, the monthly payments will be adjusted accordingly as mutually agreed by the parties, and reduced in writing, numbered, and signed by the duly authorized representative of the State and Contractor.

The invoice shall be printed on the Contractor's official letterhead, reference this contract number, include the date of invoice, remit address, and be signed off by an authorized representative of the Contractor.

Contractor will submit bills or invoices to:

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

2. The Contractor agrees to a 6% retainage of the total contract for the duration of the agreement. Such retainage will be withheld from each monthly payment. The Contractor can submit a bill to the State for the retainage at the end of each contract period. The end of Contract Period 1 is November 30, 2012, and the end of Period 2 is June 30<sup>th</sup>, 2013. The State will have thirty (30) days after submission of an invoice to make a payment. Details concerning retainage payments are discussed in Section 8 of this attachment.

For all services provided under this contract, the State agrees to pay the Contractor in the following manner:

- \$235,557.04 monthly less the 6% retainage for the period November 1, 2011 through November 30, 2011
- \$222,232.16 monthly less the 6% retainage for the period December 1, 2011 through October 31, 2012.
- \$222,232.24 monthly less the 6% retainage for the period November 1, 2012 through November 30, 2012.
- \$223,528.85 monthly less 6% retainage for the period December 1, 2012 through May 31, 2013.
- \$223,528.90 monthly less the 6% retainage for the period June 1, 2013 through June 30, 2013.

The Contractor will maintain all supporting documentation of expenses under the contract. The State will have thirty (30) days from invoice date to make a payment.

3. The Contractor agrees to provide the State with actual expenditures for the quarters ending in September, December, and March forty-five (45) calendar days from the end of the quarter. Contractor agrees to provide the State with actual expenditures for the contract period of 11/1/2011-06/30/2013 of services rendered under the contract sixty (60) days from the end of the contract period. The State reserves the right to renegotiate the contract amount for State fiscal year 2014 to reflect actual contract expenditures.

4. State will remit all payments to:

Name: MAXIMUS Health Services

Address: P.O. Box 791188  
Baltimore, MD 21279-1188

5. Budget for Green Mountain Care Member Services Functions:

**Budget for the Period 11/1/2011 through 6/30/2013**

Category	Number of Staff	Costs Nov 1, 2011- Nov 30, 2012	Costs Dec 1, 2012-June 30, 2013	Total Costs
<b>Personnel:</b>				
Administrative	4.1	\$392,104.56	\$ 208,266	\$ 600,371
Direct Staff	32	\$1,039,919.00	\$ 561,781	\$ 1,601,700
				\$ -
<b>Total Personnel Costs</b>	36.1	\$ 1,432,024	\$ 770,047	\$ 2,202,071
				\$ -
<b>Administrative/Other Indirect Costs:</b>				\$ -
				\$ -
Travel		\$ 6,382	\$ 3,170	\$ 9,552
Printing and graphics		\$ 45,468	\$ 22,730	\$ 68,198
Telephone		\$ 168,702	\$ 92,012	\$ 260,714
Temporary help		\$ 325,923	\$ 177,072	\$ 502,995
Postage		\$ 129,825	\$ 71,124	\$ 200,949
Rent		\$ 166,753	\$ 88,568	\$ 255,321
Computers/ Software/ Equipment		\$ 39,106	\$ 21,509	\$ 60,615
Other ODCs		\$ 70,159	\$ 39,865	\$ 110,025
Indirect costs		\$ 518,000	\$ 278,606	\$ 796,606
				\$ -
<b>Total Administrative/Other Indirect Costs</b>		\$ 1,470,319	\$ 794,655	\$ 2,264,974
				\$ -
				\$ -
<b>Total Direct and Indirect Costs</b>		\$ 2,902,343	\$ 1,564,702	\$ 4,467,045
				\$ -
				\$ -
<b>Total Costs*</b>		\$ 2,902,343	\$ 1,564,702	\$ 4,467,045

7. PERFORMANCE STANDARDS & PENALTIES

In the event that the Contractor fails to meet performance standards the State, at the discretion of the DVHA Commissioner, may require the Contractor to pay a penalty to the State. If this occurs, the DVHA Commissioner or his/her designee will notify the Contractor in writing of the nature of the performance issue. The State will also designate a period of time, not to be less than ten business days, in which the Contractor must provide a written response to the notification and, provided the performance failure is capable of cure. The Contractor will be afforded a reasonable cure period, not less than 15 business days, during which time the Contractor may remedy the issue and return to compliance. Should the Contractor fail to remedy the issue, the State may notify the Contractor of its intent to assess the penalty and amount of the penalty. All penalties will be deducted from the Contractor's retainage payments as outlined in Section 8 of this attachment.

A. Damages and Sanctions

It is expressly agreed by the State and the Contractor that, in the event of a failure to meet the performance requirements, if damages are sustained by the State, that the Contractor may be subject to damages according to the below subsections.

#### B. Timeliness/Turnaround

The Contractor must meet and document all of these minimum standards for mailing, enrollment, and data transferred to the State as defined below:

- For individuals to be enrolled who are transferred to the Contractor on a daily basis by State, the Contractor has one (1) business day to send a complete set of enrollment materials
- For individuals to be enrolled who are transferred to the Contractor in a monthly cohort, the Contractor has five (5) business days to send a complete set of enrollment materials.
- The Contractor has two (2) business days to mail the confirmation letter to an enrollee.
- Contractor has two (2) business days from date of request to provide additional written information to be sent to an eligible individual, or to arrange a face-to-face session.
- Contractor must make a verifiable follow up contact (telephone call or letter) to non-responsive eligible members within twenty-one (21) calendar days after the initial enrollment packet was mailed.
- Contractor will process beneficiary requests for a Grievance, Appeal and/or Fair Hearing within one (1) business day of the initial request.
- Contractor will complete updates on third party and other insurance information within ten (10) calendar days of the initial request.
- Contractor will complete beneficiary informational updates in ACCESS or CATN the worker, as appropriate for either the HAEU or district offices, within two (2) business days of the initial request.

Penalties for failing to meet a timeliness/turnaround standard may be assessed up to \$1,000.00 per standard during each month a standard is not met.

#### C. Telephone Response

The Contractor must meet the following performance standards related to the responsiveness of staffed telephone lines for up to 1,500 calls per day:

100% of all incoming calls must be answered within 25 seconds;

95% of held calls are transferred to a live operator within 2 minutes; and

100% of held calls are transferred to a live operator within 4 minutes.

Penalties for failing to meet a telephone response standard may be assessed at the lesser of \$1,000.00 per standard during each month a standard is not met, or \$250.00 for each percentage point not met.

#### D. Reporting



The Contractor will provide the State with informational and financial reports in a timely manner. Weekly informational reports will be due to the State by the Thursday of the following week. Monthly informational reports will be due to the State by the 15<sup>th</sup> of the following month. Quarterly financial reports will be due to the State forty-five (45) calendar days from the end of the quarter. Annual financial reports will be due to the State sixty (60) calendar days from the end of the contract period, as defined in Attachment B, section 3. Penalties for failing to meet a reporting standard may be assessed at \$250.00 per week for each standard that is not met.

#### E. Compliance with Other Material Contract Provisions

The objective of this standard is to provide the State with an administrative procedure to address contract compliance issues which are not specifically defined as performance requirements listed above or for which damages due to noncompliance cannot be quantified in the manner described in Section #7 of this attachment.

The State may identify contract compliance issues resulting from the Contractor's performance of its responsibilities through routine contract monitoring activities. If this occurs, the DVHA Commissioner or designee will notify the Contractor in writing of the nature of the performance issue. The State will also designate a period of time, not to be less than ten business days, in which the Contractor must provide a written response to the notification and the Contractor shall be afforded a reasonable period of time in which the Contractor should remedy the noncompliance. The State acknowledges that given the generality of this Section, a reasonable cure period may exceed ten (10) business days based on the nature of the performance issue,

#### 8. DEDUCTION OF DAMAGES FROM PAYMENTS

Penalties identified by the State shall be deducted from retainage reimbursement payable to the Contractor at the conclusion of each contract year in the agreement. The Project Manager shall notify the Contractor in writing of any claim for penalties at least fifteen (15) days prior to the date the State deducts such sums from money payable to the Contractor. The State may, at its sole discretion, return a portion or all of any penalties collected as an incentive payment to the Contractor for prompt and lasting correction of performance deficiencies.

#### 9. MEMBER SERVICES TRANSITION

Prior to conclusion of the contract due to Contractor's default, Contractor's termination for convenience, or expiration of the contract, the Contractor shall develop a transition plan that upon expiration of the contract will assist the State in continuing operations as necessary for the period set forth in the transition plan. The Contractor and the State shall make best efforts to agree upon the transition plan no later than sixty (60) days prior to the contract termination date. The transition plan will detail how the Contractor shall cooperate with any new contractor or with State staff to ensure all existing data and materials not proprietary to Contractor are supplied. Prior to the conclusion of the contract as stated in this section, the Contractor shall provide, at no extra charge but only to the extent commercially practicable, assistance in turning over all related non-proprietary materials as agreed to by the State and the Contractor to the State and ensure a smooth transition with complete documentation. Contractor shall not be obligated to incur costs arising out of transition activities to the extent such costs are the result of unreasonable delay by the State or the acts or omissions of a third party.

Upon termination of this Contract, neither party shall have any further obligation to the other party, provided, however, that such termination shall not release the contractor or the State of its obligations including: payment obligations accrued to the Contractor prior to and up to the termination date; non-solicitation, and confidentiality provisions hereof; and cooperation as to the orderly transfer and return of data, records, and case administration efforts between the Contractor and the State. Failure on the part of the Contractor to comply with these requirements in whole or part may result in forfeiture of any remaining retainage.

**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 **\$3,000,000** 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.

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 Department of Vermont Health Access** ("Covered Entity") and **Maximus Health Services, Inc.** ("Business Associate") as of **December 15<sup>th</sup>, 2011** ("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](http://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.