

**AMENDMENT**

It is agreed by and between the State of Vermont, Department of Vermont Health Access (hereafter called the “State”) and National Government Services, Inc. (hereafter called the “Contractor”) that the contract on the subject of audit & cost settlement services, effective August 1, 2008 is hereby amended effective July 31, 2012 as follows:

**1. By deleting on page 1 of 18 in Amendment #3, Section 3 (Maximum Amount) and substituting in lieu thereof the following Section 3:**

**3. Maximum Amount.** In consideration of the services to be performed by Contract, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed **\$236,767.00**.

**2. By deleting on page 1 of 18 in Amendment #3, Section 4 (Contract Term) and substituting in lieu thereof the following Section 4:**

**4. Contract Term.** The period of the Contractor’s performance shall begin on August 1, 2008 and end on January 31, 2013.

**3. By deleting on page 1 of 18 in Amendment #3, Appendix I (Proposed List of Jobs to be Completed) and substituting in lieu thereof the following Appendix I:**

**Appendix I – Job’s to be Completed**

| Medicaid         | Name                       | ProviderNo | FYE      | Estimated Total Hours |
|------------------|----------------------------|------------|----------|-----------------------|
| <b>Hospitals</b> |                            |            |          |                       |
| NH / VT          | Mary Hitchcock Hospital    | 300003     | 09/30/07 | 3                     |
| NH / VT          | The Cheshire Medical Cntr  | 300019     | 09/30/07 | 3                     |
| VT               | Central Vermont Hospital   | 470001     | 09/30/07 | 3                     |
| VT               | Fletcher Allen Health Care | 470003     | 09/30/07 | 3                     |
| VT               | Rutland Reg Med Center     | 470005     | 09/30/07 | 3                     |
| VT               | Brattleboro Memorial Hosp  | 470011     | 09/30/07 | 3                     |
| VT               | Southwestern VT Med Ctr    | 470012     | 09/30/07 | 3                     |
| VT               | Northwestern Med Center    | 470024     | 09/30/07 | 3                     |
| VT               | Mt Ascutney Hospital       | 471302     | 09/30/07 | 3                     |
| NH / VT          | Mary Hitchcock Hospital    | 300003     | 09/30/08 | 3                     |
| NH / VT          | The Cheshire Medical Cntr  | 300019     | 09/30/08 | 3                     |
| VT               | Central Vermont Hospital   | 470001     | 09/30/08 | 3                     |
| VT               | Fletcher Allen Health Care | 470003     | 09/30/08 | 3                     |
| VT               | Rutland Reg Med Center     | 470005     | 09/30/08 | 3                     |
| VT               | Brattleboro Memorial Hosp  | 470011     | 09/30/08 | 3                     |
| VT               | Southwestern VT Med Ctr    | 470012     | 09/30/08 | 3                     |
| VT               | Northwestern Med Center    | 470024     | 09/30/08 | 3                     |

**STATE OF VERMONT  
 AMENDMENT TO PERSONAL SERVICES CONTRACT  
 NATIONAL GOVERNMENT SERVICES**

|    |                      |        |          |           |
|----|----------------------|--------|----------|-----------|
| VT | Mt Ascutney Hospital | 471302 | 09/30/08 | 3         |
|    | <b>Total</b>         |        |          | <b>54</b> |

**Notes**

To complete settlement of the above hospitals we will complete the following tasks:

1. separate the Medicare work from the Medicaid work
2. ensure the interim settlement has been included in the workpapers
3. send out the Medicaid only adjustments to the provider for review
4. issue a Medicaid only settlement to the provider and State of Vermont

**RHCs**

|    |                                          |        |          |                                                  |
|----|------------------------------------------|--------|----------|--------------------------------------------------|
| VT | Community Health Center of Burlington VT | 471800 | 04/30/07 | To be completed under Amendment<br>3 hours/funds |
| VT | Community Health Center of Burlington VT | 471800 | 04/30/08 | To be completed under Amendment<br>3 hours/funds |
| VT | The Health Center                        | 471818 | 06/30/08 | To be completed under Amendment<br>3 hours/funds |
| VT | Richford Health Center-Richford          | 471807 | 12/31/08 | To be completed under Amendment<br>3 hours/funds |
| VT | Community HC of Rutland Region           | 471815 | 12/31/08 | To be completed under Amendment<br>3 hours/funds |
| VT | Little Rivers Health Care                | 471826 | 12/31/08 | 3 hours/funds                                    |
| VT | Northern Counties Health Care            | 471801 | 03/31/09 | 17.25                                            |
| VT | Community Health Center of Burlington VT | 471800 | 04/30/09 | 17.25                                            |
| VT | Ammonoosuc Community Health Services     | 301804 | 06/30/09 | 17.25                                            |
| VT | Indian Stream/ Colebrook                 | 301819 | 06/30/09 | 17.25                                            |
| VT | The Health Center                        | 471818 | 06/30/09 | 17.25                                            |
| VT | Copley Professional Services Group       | 471820 | 09/30/09 | 17.25                                            |
| VT | Richford Health Center-Richford          | 471807 | 12/31/09 | 17.25                                            |
| VT | Community HC of Rutland Region           | 471815 | 12/31/09 | 17.25                                            |
| VT | Little Rivers Health Care                | 471826 | 12/31/09 | 17.25                                            |
| VT | Northern Counties Health Care            | 471801 | 03/31/10 |                                                  |
| VT | Community Health Center of Burlington VT | 471800 | 04/30/10 |                                                  |
| VT | Ammonoosuc Community Health Services     | 301804 | 06/30/10 |                                                  |
| VT | Indian Stream/ Colebrook                 | 301819 | 06/30/10 |                                                  |
| VT | The Health Center                        | 471818 | 06/30/10 |                                                  |
| VT | Copley Professional Services Group       | 471820 | 09/30/10 |                                                  |
| VT | Richford Health Center-Richford          | 471807 | 12/31/10 |                                                  |
| VT | Community HC of Rutland Region           | 471815 | 12/31/10 |                                                  |
| VT | Little Rivers Health Care                | 471826 | 12/31/10 |                                                  |
| VT | Northern Counties Health Care            | 471801 | 03/31/11 |                                                  |

**STATE OF VERMONT  
 AMENDMENT TO PERSONAL SERVICES CONTRACT  
 NATIONAL GOVERNMENT SERVICES**

|    |                                             |        |          |               |
|----|---------------------------------------------|--------|----------|---------------|
| VT | Community Health Center of Burlington<br>VT | 471800 | 04/30/11 |               |
| VT | Ammonoosuc Community Health<br>Services     | 301804 | 06/30/11 |               |
| VT | Indian Stream/ Colebrook                    | 301819 | 06/30/11 |               |
| VT | The Health Center                           | 471818 | 06/30/11 |               |
| VT | Copley Professional Services Group          | 471820 | 09/30/11 |               |
| VT | Springfield Medical Care Systems            | 471833 | 09/30/11 |               |
| VT | Richford Health Center-Richford             | 471807 | 12/31/11 |               |
| VT | Community HC of Rutland Region              | 471815 | 12/31/11 |               |
| VT | Little Rivers Health Care                   | 471826 | 12/31/11 |               |
|    | <b>Total</b>                                |        |          | <b>155.25</b> |

**Notes**

To complete settlement of the above FQHCs we will complete the following tasks:

1. complete first and second level review of the job
2. coordinate with the State of Vermont on supplement settlement data
3. issue the adjustments to the provider for review
4. issue a Medicaid only settlement to the provider and State of Vermont
5. For All jobs with no hours allotted, Contractor, only as agreed upon between Contractor and State, will work on the list of jobs (that have no estimated hours) only if the jobs with estimated hours are completed with time remaining that has not been used.

**Misc.**

|    |                                                                                                                                                                                   |  |  |    |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|----|
| VT | Dental Interim Settlements<br>Various<br>- includes a cursory review of documentation submitted and issuance of an interim settlement with notification to the state and provider |  |  | 8  |
| VT | Oversight<br>- includes management of the contract, ensuring jobs are budgeted and completed timely, responding to inquiries of the state and providers                           |  |  | 20 |
| VT | Conference Calls\Transition<br>Mtgs<br>- attendance on calls related to transition status with the State of Vermont                                                               |  |  | 8  |

|                                                    |                                                                                                                                                                                                                      |              |
|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| VT                                                 | Training of New Contractor<br>- hours associated with training new contractor or State of Vermont as required. Doesn't include any travel costs or time                                                              | 16           |
| VT                                                 | Packing & Shipping<br>- ordering boxes from storage, separating Vermont Medicaid documentation if co-mingled with Medicare documentation. Boxing and shipping to State of Vermont. Shipment costs were not included. | 86           |
| <b>Total Hospital, FQHC &amp; Transition Hours</b> |                                                                                                                                                                                                                      | <hr/> 347.25 |

**4. By deleting on page 2 of 18 in Amendment #3 the following dollar amount:**

\$210,954.00

**And substituting in lieu thereof the following dollar amount:**

\$236,767.00

**5. By adding the following language to the end of Attachment A on page 4 of 23 in the Base Agreement:**

Year 5 of this agreement shall be considered August 1, 2012 through January 31, 2013.

Performance Measures

The Contractor shall complete all of the required jobs specified in Appendix I for the State by November 30, 2012. The Contractor may submit any of the jobs listed past this date, due to unforeseen difficulties, with prior written approval by the State, which shall not be unreasonably withheld. All work after the date of November 30, 2012 shall be devoted to cooperation between the State and the Contractor in pursuing and selecting a new qualified vendor to perform audit & cost settlement services after the termination of this agreement.

**6. By deleting the following heading from Appendix II on page 3 of 18 in Amendment #3:**

Rate Year 4

**And substituting in lieu thereof the following heading:**

Rate Year 4 and 5

**7. By deleting on page 3 of 18 in Amendment #3, Appendix III (Estimate of Hours) and substituting in lieu thereof the following Appendix III:**

**Appendix III – Estimate of Hours  
 For the Period: August 1, 2012 through January 31, 2013**

| <b>Vermont Medicaid Hours Summary</b> |             |                  |                              |              |
|---------------------------------------|-------------|------------------|------------------------------|--------------|
| <b>Title</b>                          | <b>Work</b> | <b>Oversight</b> | <b>Transition Activities</b> | <b>Total</b> |
| Analyst                               | 168         | 0                | 82                           | 250          |
| A&R III                               | 27          | 5                | 4                            | 36           |
| Lead                                  | 22          | 15               | 24                           | 61           |
| <b>Total</b>                          | <b>217</b>  | <b>20</b>        | <b>110</b>                   | <b>347</b>   |

**Workload**

| <b>Cost Report Settlements</b>  |                 |                     |                        |              |
|---------------------------------|-----------------|---------------------|------------------------|--------------|
| <b>Provider Type</b>            | <b>Workload</b> | <b>Auditor Work</b> | <b>Settlement Time</b> | <b>Hours</b> |
| Acute Review                    | 18              | 2.25                | 0.75                   | 54           |
| FQHC Review                     | 9               | 16.5                | 0.75                   | 155          |
| FQHC Dent Interim               | 6               | 1.25                | 0                      | 8            |
| <b>Total Workload Hours</b>     |                 |                     |                        | <b>217</b>   |
| Oversight of workload           |                 |                     |                        | 20           |
| <b>Total Workload Oversight</b> |                 |                     |                        | <b>20</b>    |

| <b>Transition Activities</b> |              |                        |  |            |
|------------------------------|--------------|------------------------|--|------------|
| <b>Level</b>                 | <b>Level</b> |                        |  |            |
| Conference Calls             | Lead         |                        |  | 8          |
| Training                     | Lead         |                        |  | 16         |
| Packing & Shipping           | Analyst      | 43 providers x 2 hours |  | 86         |
| <b>Total Hours</b>           |              |                        |  | <b>110</b> |

**Workload Hours by Title**

| <b>Analyst</b> | <b>A&amp;R III</b> | <b>Lead</b> | <b>Total</b> |
|----------------|--------------------|-------------|--------------|
| 27             | 20                 | 7           | 54           |
| 135            | 7                  | 14          | 155          |
| 6              | 0                  | 2           | 8            |
| <b>168</b>     | <b>27</b>          | <b>22</b>   | <b>217</b>   |

**8. By adding the following language to the bottom of Attachment B on page 8 of 23 of the Base Agreement:**

Performance Measures

The Contractor shall complete the performance measure specified in Attachment A.

9. **By deleting on pages 4-17 of Amendment #3, Attachments C and E in their entirety, and substituting in lieu thereof the following Attachments C and E:**

**ATTACHMENT C  
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS**

1. **Entire Agreement.** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law.** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If appropriations are insufficient to support this Agreement, the State may cancel on a date agreed to by the parties or upon the expiration or reduction of existing appropriation authority. In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to fund this Agreement from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The Party shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the

performance of this Agreement.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

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

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverage is in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

**Workers Compensation:** With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

**General Liability and Property Damage:** With respect to all operations performed under the Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations  
Products and Completed Operations  
Personal Injury Liability  
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence  
\$1,000,000 General Aggregate  
\$1,000,000 Products/Completed Operations Aggregate  
\$ 50,000 Fire/ Legal/Liability

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

**Automotive Liability:** The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

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

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

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

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

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

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

10. **Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.
11. **Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.
12. **Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
13. **Taxes Due to the State:**
- a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal

income tax on income earned within the State.

- b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

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

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

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

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

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

**16. No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

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

**18. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.

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

respect to unionization.

State of Vermont – Attachment C  
Revised AHS – 7-1-2012

## 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 **National Government Services, Inc.** (“Business Associate”) as of **August 1, 2008** (“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)

This amendment consists of 16 pages. Except as modified by this amendment and any previous amendments, all provisions of this contract, (#13260) dated August 1, 2008 shall remain unchanged and in full force and effect.

**STATE OF VERMONT  
DEPARTMENT OF VERMONT HEALTH ACCESS**

**CONTRACTOR  
NATIONAL GOVERNMENT SERVICES, INC.**

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MARK LARSON, COMMISSIONER

DATE

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MICHAEL KAPP, PRESIDENT

DATE