ADMINISTRATIVE SERVICES CONTRACT

This Administrative Services Contract, including all Exhibits hereto (the “Agreement”), is entered into by and between the City of Burlington (“Plan Sponsor”) and Blue Cross and Blue Shield of Vermont (“Contract Administrator”), and is effective as of July 1, 2013 (the “Effective Date”). Plan Sponsor and Contract Administrator are collectively referred to in this Agreement as the “parties.”

WHEREAS, Plan Sponsor has established a self-funded Employee Welfare Benefit Plan (the “Plan”), as the Employee Retirement Income Security Act of 1974 (“ERISA”) defines that term, to provide healthcare benefits to its eligible Employees and their eligible dependents; and

WHEREAS, Plan Sponsor desires to retain Contract Administrator to provide access to a network of contracted providers and to provide certain administrative services with respect to the Plan; and

WHEREAS, Plan Sponsor and Contract Administrator desire to set forth herein their respective obligations, duties, rights and liabilities.

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements herein set forth, Plan Sponsor and Contract Administrator hereby agree as follows:

**ARTICLE I – DEFINITIONS**

* 1. “Administrative Services Fee” means the fee charged by the Contract Administrator for administrative services provided under this Agreement as noted on Exhibit B.
  2. “Behavioral Health Contractor” means the entity with whom the Contract Administrator has contracted to provide behavioral health services.
  3. “Combined Network” means the Contract Administrator’s Network and the network of providers available through BlueCard.
  4. “Contract Administrator’s Network” means the network of Providers under contract with Contract Administrator (including network hospitals and other providers or practitioners with which the Contract Administrator has contracted) to provide Covered Services to Plan Participants.
  5. "Claim" means written notification in a form acceptable under the Plan that health services or other benefits have been rendered or furnished to a Plan Participant. This notification must set forth in full the details of such service including, but not limited to, the Covered Person's name, age, sex and identification number, the name and address of the Provider, a specific itemized statement of the service rendered or furnished, the date of service, applicable diagnosis and the Claim Charge for such service and any other information required by ERISA or PPACA.
  6. "Claim Charge(s)" means the amount that appears on a Claim as the Provider's regular charge for service rendered to a patient, without further adjustment or reduction.
  7. "Claim Payment" means the amount of payment for an approved Claim by Contract Administrator in accordance with the benefits specified in the Plan, plus any related Surcharges, including any capitation payments.
  8. “Confidential Information” means this Agreement and information provided to the Contract Administrator by the Plan Sponsor, or vice versa, which is identified as confidential information, including reimbursement information, patient identifiable information, Plan Sponsor enrollment lists and marketing information.
  9. "Employee" means the person currently employed by the Plan Sponsor to whom current active coverage under the Plan has been extended, with the exception that counts of persons to which this term applies may include COBRA primary insureds not currently employed by the Plan Sponsor.
  10. “COBRA” means the Consolidated Omnibus Reconciliation Act of 1985, as amended.
  11. “Covered Services” means a service or supply provided to a Plan Participant that is determined to be covered under the Plan and this Agreement.
  12. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64).
  13. “Paid Claims” means a Claim processed and payment issued by Contract Administrator in accordance with this Agreement.
  14. “PBM” means the pharmacy benefit manager contracted by the Contract Administrator to provide pharmacy benefit services.
  15. “Plan Document” means the written instrument required under ERISA §402(a)(1) and the Summary Plan Description and attached hereto as Exhibit A.
  16. "Plan Participants" means Employees, dependents, beneficiaries and retirees eligible to receive benefits as specified in the Plan.
  17. “Participating Providers” means providers which have agreed to participate in the Contract Administrator’s Network, and to accept Contract Administrator’s applicable pre-negotiated payment allowance for certain Covered Services as payment in full, and therefore should not bill the Plan Participants for any amount in excess of the payment allowance for such Service(s).
  18. "Provider” means any hospital, health care facility, laboratory, person or entity duly licensed to render services to a Plan Participant or any other provider of medical services, products, or supplies which are services or goods covered by the Plan.
  19. “Protected Health Information” or “PHI” means individually identifiable health information that is maintained or transmitted by a covered entity as defined in [45 CFR §160.103](https://checkpoint.riag.com/app/main/docLinkNew?usid=2d30c32248d8&DocID=i079dae96f10011dc9cb0c7f8ee2eaa77&SrcDocId=T0HIPAA%3A820.11-1&feature=ttoc&lastCpReqId=5262591" \t "_top).
  20. “Run-Out Claim(s)” means Claims incurred but where no payment has been issued by Contract Administrator prior to the date of termination of this Agreement, whether or not claims for such services have been submitted before the date of termination, or Claim Payments for such services have been made by Contract Administrator, as of the date of termination. "Run-Out Claim(s)" includes adjustments after the date of termination with respect to Claims initially processed prior to the date of termination. For purposes of this Agreement, the date a claim is “incurred” is, for outpatient claims, the date the particular service was rendered or the supply, such as durable medical equipment and pharmacy drugs, was furnished, and, for inpatient hospital claims, the date of admission to the hospital.
  21. “Run-Out Period” means the period of time mutually agreed to by both parties during which the Contract Administrator will process Run-Out Claims.
  22. “Services” means the administrative claims payment services provided by the Contract Administrator in accordance with the terms of this Agreement, including services set forth in Exhibit A, Exhibit C and Exhibit C-1 for Plan Participants.
  23. “Summary Plan Description” means a written document describing Plan benefits that complies with the requirements of ERISA including, but not limited to, ERISA §102, that is attached hereto as Exhibit A.
  24. "Surcharge" means state or federal taxes, assessments or other fees paid by Contract Administrator, including but not limited to those based upon or measured by the amount of (i) fees paid or payable to Contract Administrator for services provided under this Agreement, (ii) claims paid pursuant to this Agreement, and (iii) the Surcharges listed in Section 17 of Exhibit C. The Patient-Centered Outcomes Research Trust Fund Fee is specifically excluded from the definition of Surcharge.

**ARTICLE II – RESPONSIBILITIES OF CONTRACT ADMINISTRATOR**

* 1. Appointment. The Plan Sponsor hereby retains and appoints the Contract Administrator to provide the Services in connection with the administration of the Plan, and the Contract Administrator accepts said appointment.
  2. In General. Contract Administrator will provide administrative claims payment services in accordance with the terms of the Plan Document, its duties and services as described in **Exhibit C** and **Exhibit C-1**, and other duties specifically assumed by it pursuant to this Agreement. Contract Administrator performs the services set forth in **Exhibit C** and **Exhibit C-1** with respect to benefits provided to Plan Participants under the Plan. Contract Administrator will use its reasonable business judgment in performing its duties under this Agreement, and will administer the benefits described in the Plan Document in accordance with Contract Administrator’s customary administrative standards and practices for self-funded group health benefit plans. Contract Administrator provides administrative claims payment services only and does not assume any financial risk or obligation with respect to claims.
  3. Interpretation Authority. Contract Administrator has the authority to interpret and apply the terms of the Plan Document and to determine whether and to what extent a Plan Participant has coverage for a requested service, even when a Provider has prescribed or recommended the service.
  4. Status of Contract Administrator. Plan Sponsor on behalf of itself and the Plan Participants hereby expressly acknowledges its understanding that this Agreement constitutes a contract solely between Plan Sponsor and Contract Administrator, which is an independent corporation operating under a license from the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield plans (the “Association”) permitting Contract Administrator to use the Blue Cross and Blue Shield service marks in the State of Vermont, and that Contract Administrator is not contracting as the agent of the Association. Plan Sponsor on behalf of itself and the Plan Participants further acknowledges and agrees that it has not entered into this Agreement based on representations by any person other than Contract Administrator and that no person entity or organization other than Contract Administrator shall be held accountable or liable to Plan Sponsor for any of Contract Administrator’s obligations to Plan Sponsor created under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of Contract Administrator other than those obligations created under other provisions of this Agreement.
  5. Privacy of Protected Health Information. The parties acknowledge that the Plan is a Covered Entity under HIPAA and that Contract Administrator is a Business Associate of Plan Sponsor on behalf of the Plan as Plan Sponsor, as defined by HIPAA. In connection with its services as a Business Associate of the Plan Sponsor under the Agreement, Contract Administrator acknowledges that it will receive or be obliged to create PHI from or on behalf of a Covered Entity. With respect to such PHI, Contract Administrator will comply with such HIPAA requirements as are set forth in **Exhibit G**.
  6. Contract Administrator’s Subcontractors and Agents.

2.6.1 Contract Administrator, at its sole discretion, may contract with subcontractors and agents for performance of any of the Services to be performed by Contract Administrator under this Agreement, provided Contract Administrator will remain fully responsible and liable for performance of the Services, even though delegated to Contract Administrator’s subcontractors or agents.

2.6.2 Contract Administrator, to the extent required by law, will require each subcontractor and agent to which Contract Administrator is permitted by this Agreement or in writing signed by Plan Sponsor on behalf of the Plan to disclose Plan Participant’s PHI to provide reasonable assurance, evidenced by written contract, that such other entity will comply with the same privacy and security obligations with respect to Plan Participant’s PHI as this Agreement applies to Contract Administrator.

* 1. Contract Administrator’s Representations and Warranties. Contract Administrator represents and warrants to Plan Sponsor that as of the Effective Date:
     1. Contract Administrator has established and maintains written agreements with a network of Providers that require such Providers to cooperate with utilization review programs.
     2. Contract Administrator’s written agreements with said Providers are in substantial compliance with all applicable federal, state and local laws, rules and regulations.
  2. Claims Reports. Contract Administrator will provide to the Plan Sponsor, at the Plan Sponsor's reasonable written request, Contract Administrator's standard reports and data extracts as further described in Exhibit C, Section 15 as permitted under HIPAA. Unless otherwise requested by the Plan Sponsor, the Contract Administrator may adjust all such information provided to the Plan Sponsor to prevent the disclosure of the identity of any Plan Participant. Additional reports and data extracts requested will be billed at an hourly rate.
  3. Medicare Reporting. Contract Administrator shall add Plan enrollment information to accompany the mandatory report of the Plan that Contract Administrator, acting on behalf of the Plan, submits to Medicare each quarter.

**ARTICLE III - RESPONSIBILITIES OF THE PLAN SPONSOR**

3.1 In General. Plan Sponsor shall provide Contract Administrator with information to determine Plan Participant eligibility under the Plan as set forth in Section 3.5. In addition, Contract Administrator shall perform such other duties and services as described elsewhere in this Agreement to be performed by the Contract Administrator. Plan Sponsor shall notify Contract Administrator in writing of any changes in Plan Documents or Plan benefits at least ninety (90) days prior to the effective date of such changes. Contract Administrator shall have thirty (30) days following receipt of such notice to inform Plan Sponsor of whether it will administer such changes. Contract Administrator may charge additional fees relating to any reasonably anticipated increase in cost to administer the Plan benefits and otherwise revise this Agreement, including without limitation, the financial terms set forth in Exhibit B because of changes which Contract Administrator agrees to administer.

3.2 Financial Obligations. Plan Sponsor shall be solely responsible for funding all approved Claims, as described in Article IV and Exhibit B, and is the Payor of benefits for Plan Participants. In addition, Plan Sponsor shall promptly pay Contract Administrator an Administrative Services Fee for providing Services under this Agreement as well as all other charges specified in Article IV of this Agreement, Exhibit B and elsewhere in this Agreement. The parties acknowledge and agree that the claims funding mechanism described herein is intended to reflect an Administrative Services Contract arrangement within the meaning of Statement of Statutory Accounting Principles No. 47.

3.3 Plan Sponsor to Control Plan. Plan Sponsor retains full and final authority and responsibility for the Plan and its operation. Contract Administrator is empowered to act on behalf of the Plan only as stated in this Agreement or as mutually agreed in writing by Plan Sponsor and Contract Administrator.

3.4 Eligibility. Plan Sponsor shall provide the Contract Administrator with accurate and complete enrollment information on a timely basis in writing or by electronic medium acceptable to Contract Administrator, shall supply Contract Administrator with all information regarding the eligibility of Plan Participants and shall notify Contract Administrator by the tenth day of the month following any changes in Plan participation. The Plan Sponsor understands that the Contract Administrator must be provided with accurate and complete enrollment information in order to properly apply Plan benefits, and will rely on the records and other information given by the Plan Sponsor or others on its behalf. The enrollment data shall include all necessary information required by the Contract Administrator. Contract Administrator shall not be responsible in any manner for any delay or error caused by the Plan Sponsor's failure to furnish accurate eligibility information. Plan Sponsor represents that it has informed Plan Participants through enrollment forms executed by Employees, or in another manner which satisfies applicable law, that confidential information relating to their benefit claims may be disclosed to third parties in connection with plan administration.

3.5 No Underwriting. Plan Sponsor retains the ultimate responsibility for funding payment of Claims under the Plan and all expenses incident to the Plan, except as Contract Administrator has specifically undertaken in this Agreement. Contract Administrator does not insure or underwrite the liability of Plan Sponsor or the Plan, and has no responsibility for determining the terms of or the benefits to be provided under the Plan.

3.6 Plan Sponsor’s Data and Document Obligations. Plan Sponsor will use its best efforts to cooperate with and assist Contract Administrator in the performance of Contract Administrator’s duties hereunder. Plan Sponsor shall furnish to Contract Administrator on a timely basis certain information concerning the Plan and Plan Participants as Contract Administrator may require for the performance of its duties. In addition to the eligibility information required by Section 3.4, such data and documentation shall include, without limitation:

3.6.1 The current Plan Document, and all other documents by which the Plan is established and maintained, and any amendments or changes to the Plan Document or other documents as adopted from time to time. The parties acknowledge that the Plan Document included in Exhibit A is the current Plan Document as of the Effective Date.

3.6.2 All data required by Contract Administrator regarding the Plan Participants who are to be covered under this Agreement. Such data includes (a) a list of the Plan Participants to be covered under this Agreement, (b) a completed enrollment form for each Plan Participant to be covered under this Agreement, and (c) information required for HIPAA Certificates of Creditable Coverage that Plan Sponsor directs Contract Administrator to issue as set forth in **Exhibit** C. In addition, the Plan Sponsor shall promptly notify the Contract Administrator of all terminated employees and, if applicable, COBRA qualifying events. If Plan Sponsor has not timely notified Contract Administrator of a Plan Participant’s change in status under this Agreement, Plan Sponsor will be liable for any benefit paid for that Plan Participant to which the Plan Participant was not entitled under this Agreement because of the Plan Participant’s change in status under this Agreement. Clerical errors or delays in keeping reporting data relative to coverage under this Agreement will not invalidate coverage otherwise validly in force nor continue coverage otherwise validly terminated. Although Plan Sponsor is required to provide Contract Administrator with information regarding COBRA qualifying events, Plan Sponsor shall be responsible for providing Participants with all required COBRA notices.

3.7 HIPAA Compliance. The Plan Sponsor represents and warrants that the Plan Document currently does and at all times shall incorporate the provisions required by 45 CFR §164.504(f)(2), and agrees to comply with the Plan Document as amended, and the Plan authorizes Contract Administrator in writing to disclose a Plan Participant’s PHI to the Plan Sponsor for Plan administration functions to be performed by the Plan Sponsor as specified therein. Contract Administrator may rely on Plan Sponsor’s certification and the Plan’s foregoing authorization, and will have no obligation to verify that the Plan Document has been amended to comply with such requirements or this Agreement or that Plan Sponsor is complying with the Plan Document as amended.

3.8 Compliance Obligations. Except for functions performed by the Contract Administrator in connection with this Agreement, the Contract Administrator shall have no responsibility for, or liability with respect to, the compliance or non-compliance of the Plan with any applicable federal, state, or local rules, laws and regulations, and the Plan Sponsor shall have the sole responsibility for and shall bear the entire cost of compliance with all federal, state and local rules, laws and regulations, including but not limited to, any licensing, filing, reporting and disclosure requirements as may apply to the Plan, and all costs, expenses, and fees relating thereto. The Contract Administrator shall have the responsibility for and bear the cost of non-compliance with any federal, state or local rules, laws or regulations as may apply to the Contract Administrator in connection with performance of its obligations under this Agreement.

3.9 Disclosure to Plan Participants. The Plan Sponsor shall be responsible to communicate to Plan Participants all information required by ERISA and other applicable law concerning the Plan, including, without limitation, Summaries of Benefit Coverage, Summary Plan Descriptions, summary of material modifications, notices of material benefit reductions and summary annual reports.

3.10 Medicaid Administration. If a state agency responsible for Medicaid makes demand upon Contract Administrator or the Plan for repayment or other remedy in cases in which the state agency determines that the Plan should have paid primary, Contract Administrator shall notify the Plan Sponsor. The Plan Sponsor will promptly notify Contract Administrator in writing whether to repay the state agency. If Contract Administrator repays the state agency, it may add the payment amount to the next invoice for Claim Payments and Plan Sponsor will reimburse Contract Administrator for said amount.

* 1. Medicare Secondary Payer. Contract Administrator shall rely on eligibility and enrollment information provided by Plan Sponsor to determine the primary and secondary payer under the Medicare Secondary Payer ("MSP") statutes and regulations (42 U.S.C. Section 1395(y), and 42 CFR Part 411, Subparts B-H). Plan Sponsor further agrees to provide Contract Administrator with full cooperation and provide such additional information and documentation as is requested by Contract Administrator to make such determinations. More specifically, Plan Sponsor will provide Contract Administrator with its exact (total) group size, including the number of employees who do not participate in Plan Sponsor's Plan. Plan Sponsor further acknowledges that Plan Sponsor is responsible for compliance with MSP statues.
  2. Centers for Medicare and Medicaid Recoveries. If the Centers for Medicare and Medicaid Services ("CMS") make demand upon the Plan for repayment or other remedy in cases which CMS determines that the Plan should have paid primary, Contract Administrator will notify the Plan Sponsor in writing. If Contract Administrator repays CMS, it may add the payment amount to the next invoice for the net Claim Payment and Plan Sponsor will reimburse Contract Administrator for said amounts. The Plan Sponsor agrees that, if it fails to provide prompt written authorization, it will be responsible for interest and penalties, as applicable, that may be due to CMS, and in such event the Plan Sponsor agrees to indemnify and hold harmless Contract Administrator against and from all loss, liability, damages, penalties and expenses, including reasonable attorneys' fees or other cost or obligation resulting from or arising out of Plan's failure to fund or to promptly authorize Contract Administrator to repay any amounts demanded by CMS or its agents.
  3. Regulatory Compliance. The Plan Sponsor will adopt the State of Vermont independent review process ("State Reviewer") to administer the review of Adverse Benefit Determination or a Final Internal Adverse Benefit Determination as defined in 45 CFR § 147.136(a). The Plan Sponsor understands that if the State Reviewer determines that the service subject to the appeal is a Covered Service, the Plan Sponsor will be required to pay for it.
  4. Security Deposit**.** On or before the Effective Date, the Plan Sponsor will furnish the Contract Administrator an advance security deposit ("Security Deposit") to secure the Plan Sponsor's obligations to the Contract Administrator, and has no effect, application, or operation regarding the Plan Sponsor's direct obligations to the Plan.
     1. The Security Deposit shall be deposited in a bank account maintained by Contract Administrator at a bank or other financial institution ("Bank Account"). Contract Administrator will retain any interest or bank credits derived from such Bank Account ("Earnings") to offset bank charges and other reasonable administrative expenses incurred by Contract Administrator in performing its duties under this Agreement. Earnings in the Bank Account will be accrued at a Federal Funds rate as of the date of deposit or such other rate as the bank may customarily apply to this type of account.
     2. In order to facilitate administration of the Plan, Contract Administrator (or its designee) may commingle the Plan Sponsor's funds with Contract Administrator funds and funds deposited by other employer plan sponsors; provided, however, that each employer plan sponsor's funds in the Bank Account shall be separately accounted for and the Security Deposit provided by the Plan Sponsor shall not be used other than as detailed in Section 3.14.4.
     3. The amount of the initial Security Deposit shall be $259,313. Except as required elsewhere in this Agreement, the Contract Administrator may, in its discretion, but not more frequently than once per calendar year quarter, require a greater or lesser Security Deposit amount from the Plan Sponsor to secure the Plan Sponsor's obligations under this Agreement. If the Contract Administrator requires a greater amount, the Contract Administrator will notify the Plan Sponsor of the required increase, which shall be due and payable within 30 days of the Plan Sponsor's receipt of such notice of agreed upon invoicing frequency and related Security Deposit amount. The Security Deposit is based upon expected paid Claims and estimated future changes (i.e., changes to capitations, number of Plan Participants, etc.) and is representative of 1.5 weeks of estimated expected Claims and changes for a weekly customer. If the Contract Administrator requires a lesser amount, the Contract Administrator will notify the Plan Sponsor of the permitted decrease, which the Contract Administrator will refund or credit to the Plan Sponsor within 30 days of the Contract Administrator’s giving of this notice. For frequency purposes, replenishment under Section 3.14.4, is not an increase under this Section 3.14.3.
     4. The Contract Administrator may at any time and in its discretion use amounts of the Security Deposit to satisfy past due obligations owed by the Plan Sponsor to the Contract Administrator under this Agreement. Contract Administrator will notify the Plan Sponsor of intent to use funds to satisfy past due obligations. Funds so used must be replenished by the Plan Sponsor immediately upon notification of the Contract Administrator’s use.
     5. If the Plan Sponsor fails to maintain the Security Deposit as specified in this Agreement, the Contract Administrator may in its discretion immediately terminate this Agreement or suspend the performance of its obligations set forth in Exhibit C and Exhibit C-1 upon at least 30 days notice to the Plan Sponsor, and subject to any applicable termination penalties.
     6. The application of funds under this Paragraph is in no way to be construed as constituting a compromise and settlement of the full amounts owed under this Agreement.

3.15. Taxes and Surcharges.

3.15.1 If at any time, during or after the term of this Agreement, Contract Administrator is required to pay any Surcharges or is required to pay any penalties or interest assessed or accrued on any Surcharges (collectively “Penalties”), Plan Sponsor will pay Contract Administrator an additional amount equal to the Surcharges and Penalties plus any Surcharges and Penalties based upon or measured by the payment by Plan Sponsor of these additional amounts or the number of lives covered by this Agreement.

3.15.2 Any such Surcharges will be included in the Claims Invoice provided to Plan Sponsor pursuant to Section 4.2.1. and are payable in accordance with the requirements of Section 4.2.1

3.15.3 Plan Sponsor will pay these additional amounts even if the validity of Surcharges or Penalties has not been finally determined. If it is finally determined that such Surcharges or Penalties were not valid, to the extent such Surcharges and/or Penalties are refunded or otherwise returned to Contract Administrator by the appropriate federal, state or local governmental entity, Contract Administrator will refund to Plan Sponsor an amount equal to those additional amounts previously paid by Plan Sponsor plus interest, if any, determined in accordance with Contract Administrator’s regular procedures then in effect, less a pro rata share of any expenses incurred by Contract Administrator in contesting the validity of such Surcharges or Penalties.

**ARTICLE IV – PAYMENT OF CLAIMS AND COMPENSATION TO CONTRACT ADMINISTRATOR**

4.1 Claims Payments and Funding. Upon receipt of a Claim, Contract Administrator will review and determine the amount of the Claim Payment, if any, to which the Plan Participant is entitled under the terms of the Plan, and arrange to make a Claim Payment consistent with the time and manner set forth under ERISA and the regulations thereunder to providers of health care goods and services and Plan Participants on behalf of Plan Sponsor; provided, however, that Contract Administrator will only be required to make said payments if: (i) all payments due to Contract Administrator under the terms of this Agreement are paid and (ii) the Plan Sponsor performs all of its obligations under this Agreement. With respect to any Claim which is denied by Contract Administrator, Contract Administrator shall notify the Plan Participant of the denial and the Plan Participant's right to appeal the denial under the Plan in the time and manner set forth under ERISA and the regulations thereunder. The Plan Sponsor stipulates and agrees that the Plan Sponsor shall provide to Contract Administrator in a timely manner all funds necessary to reimburse the Contract Administrator for Paid Claims. Any reasonable determination consistent with the Plan Document by Contract Administrator in adjudicating a Claim under the Agreement that a Plan Participant is entitled to a Claim Payment is conclusive evidence of the liability of the Plan Sponsor to Contract Administrator for such Claim Payment.

4.2 Payments to Contract Administrator for Claims and Administrative Services Fees. Contract Administrator shall provide Plan Sponsor with two types of invoices – a Claims Invoice and an Administrative Services Fee Invoice as follows:

4.2.1 The Claims Invoice shall be provided to Plan Sponsor on a weekly basis. The Claims Invoice includes the following charges and credits (if applicable): medical Claims; pharmacy Claims; pharmacy rebates; stop loss credits; Run-Out Claims Administrative Fee; capitation (Behavioral Health, PCP, Lab and Vision ); and miscellaneous adjustments (e.g., Fraud, Waste and Abuse charges, subrogation claim adjustment, and other miscellaneous adjustments, if applicable). Contract Administrator reserves the right in its sole discretion to alter any provider or vendor payment, reimbursement and financial arrangements, including without limitation the right to convert any capitated arrangement to a fee arrangement or vice versa. The Claims Invoice also includes applicable assessments, taxes and surcharges, as described in Section 3.16 and in Exhibit C, paragraph 17. All amounts invoiced to the Plan Sponsor under the Claims Invoice are due and payable to the Contract Administrator no later than the third Business Day following Plan Sponsor’s receipt of the invoice.  For the purpose of calculating the payment deadline, if Plan Sponsor receives the invoice prior to 10:00 a.m., the day of receipt shall count as the first Business Day; and if Plan Sponsor receives the invoice after 10:00 a.m., then the day of receipt shall not count as a Business Day.

4.2.1.a The Plan Sponsor will not withhold any disputed amount from any payment due for any reason, such as a dispute regarding amounts due or failure of the Plan Sponsor to audit the Contract Administrator’s performance, but each party will use its best efforts to resolve any disagreements related to payment in accordance with the terms of Article VI and Section 10.25 of this Agreement.

4.2.1.b Late Charges. Notwithstanding anything else in this Agreement, any amount invoiced to the Plan Sponsor that is not timely paid may be subject to late charges as follows.

4.2.1.c. The Plan Sponsor will owe to the Contract Administrator a late charge for any amount past due. The late charge, which will be assessed each day that amounts remain past due, is equal to the amount past due, divided by 365, multiplied by: (1) the three-month U.S. Treasury Bill rate in effect on the day the late charge is assessed, plus (2) 1%. Each day the late charge is assessed, it will be added to and considered part of the amount that is past due on that day, such that on the next day the amount past due will equal the previous days’ amount past due plus the late charge assessed on that previous day.

4.2.1.d. Any consideration required to be paid by the Plan Sponsor that the Contract Administrator is required to pay, collect, settle, or remit, whether relating to fees, services, benefits, payments, taxes or any other consideration or aspect of this Agreement or the Plan, will automatically be increased by the amount of any fees, costs or taxes imposed, increased, or adjudged due by a lawful regulatory or governmental authority or their agents, where such imposition, increase, or judgment is made on or after the effective date of the Main Agreement.

4.2.2 The Administrative Services Fee Invoice shall be provided to Plan Sponsor on a monthly basis. The Administrative Services Fee invoice includes the Administrative Services Fee – PCPM (per contract per month), the Stop Loss/Reinsurance Premium and the IPP fees, which are specified on Exhibit B to this Agreement (the Administrative Services Contract Fee Schedule). The Administrative Services Fee includes local network access and broker commissions. All amounts invoiced to the Plan Sponsor under the Administrative Services Fee Invoice are due and payable to the Contract Administrator on the first day of the month following the month the invoice is mailed to Plan Sponsor.

4.2.2.a The initial Administrative Services Fee shall be due and payable prior to the effective date of this Agreement. The Administrative Services Fee is due on the first of each month thereafter.

4.2.2.b The Administrative Services Fee will be determined on a month by month basis. The Administrative Services Fee charged for a Plan Participant for a specific month shall not be reduced if that Plan Participant’s coverage terminated during that month.

4.2.2.c If Plan Sponsor fails to pay the Administrative Services Fee when due, Contract Administrator, at its option, may charge Plan Sponsor interest on such late payment as set out in Section 4.2.1.c.

4.2.2.d Notwithstanding any provision to the contrary, if the Plan Sponsor has failed to pay when due any amount owed to Contract Administrator, Contract Administrator shall be under no obligation to make any further Claim Payments and shall incur no other obligations under this Agreement until such default is cured.

4.2.2.e The Administrative Services Fee described in **Exhibit B** shall remain in effect for the period July 1, 2013 through June 30, 2016, without increase, subject to the following exception:

If at any time, Plan Sponsor makes any change to the Plan that results in a material increase in the services provided by Contract Administrator hereunder, the Plan Sponsor and Contract Administrator agree to negotiate an appropriate increase in the Administrative Services Fee, in good faith, and within a reasonable period of time after Contract Administrator has been made aware of such changes to the Plan.

4.3 Payment to Contract Administrator for Other Administration Charges.In addition to the Administrative Services Fee, the cost of services outlined below will be billed as a direct cost to the Plan Sponsor. Contract Administrator will submit a separate invoice for the following services and expenses to the Plan Sponsor, and payment is due immediately upon receipt of the bill(s):

a. Cost of printing non-standard Plan Participant material.

b. All costs associated with the investigation and litigation of disputed claims, including the amount of the settlement and any damages (including punitive damages, unless due to Contract Administrator's breach of the standard of care as set forth in Article II of this Agreement).

c. Cost of the development and production of customized or unique reports requested by the Plan Sponsor, such as management reports, claim reports, reports for stop loss carriers, and other special reports.

d. Cost of customized or unique systems development required by the Plan Sponsor.

e. Reprinting materials/ID cards off cycle due to changes or misinformation provided by Plan Sponsor to Contract Administrator.

f. Cost of non-standardized Plan Participant mailings.

In addition, if any Party becomes insolvent, however evidenced, or is in default of its obligation under this Agreement and such default is continuing, then any indebtedness of the non-defaulting Party to the defaulting Party (including any and all contractual obligations) may be offset and/or recouped and applied toward the payment of the non-defaulting Party's obligations hereunder.

* 1. All rights and remedies given to the Plan Sponsor or Contract Administrator under this Agreement shall be distinct, separate and cumulative, and the use of one or more thereof shall not exclude or waive the other right or remedy allowed at law or in equity, unless specifically waived in this Agreement. Further no waiver of any breach or default of either Party hereunder shall be implied from any omission by the other Party or take any action on account of any similar or different breach or default. Nor shall Contract Administrator's failure to provide the Plan Sponsor with timely notice of any amount due hereunder be considered a waiver of any amount which may otherwise be due hereunder from the Plan Sponsor.

**ARTICLE V - TERM AND TERMINATION**

5.1 Term. This Agreement is for the term beginning July 1, 2013 and ending June 30, 2016, and will continue in full force and effect from year to year thereafter unless terminated as provided in this Article ("Term").

5.2 Termination for Convenience. Either party may terminate this Agreement, for any or no reason at any time, upon 90 days' prior written notice to the other party.

5.3 Termination by Plan Sponsor. Notwithstanding the provisions of Section 5.1 above, if the Plan Sponsor does not agree to any change in Administrative Services Fees proposed by Contract Administrator pursuant to Section 4.2.2.e within 30 days of Contract Administrator's request for change in Administrative Services Fees, it may terminate this Agreement upon sixty (60) days written notice. In the event of such termination, Plan Sponsor must still pay any amounts due for the periods during which the Agreement is in effect.

5.4 Termination by Contract Administrator. Notwithstanding the provisions of Section 5.1 above, the Contract Administrator may immediately terminate this Agreement upon the occurrence of any of the following events, as determined by Contract Administrator:

5.4.1 If Plan Sponsor fails to pay when due any amount Plan Sponsor owes to Contract Administrator under this Agreement.

Notwithstanding any provision in this Agreement, Contract Administrator will be under no obligation to make any further payments of Claims if Plan Sponsor has failed to pay when due any amount owed Contract Administrator, until Plan Sponsor has cured such failure to pay;

5.4.2 The Plan Sponsor ceases to maintain the Plan;

5.4.3 If Plan Sponsor becomes insolvent;

5.4.4 At any time the Plan Sponsor otherwise materially breaches this Agreement and fails to cure such material breach in accordance with the requirements of Section 5.5;

5.4.5 If Plan Sponsor becomes insolvent, however evidenced, or is in default of its obligation to make any payment as provided by the Agreement, or if any other default by Plan Sponsor under this Agreement has occurred and is continuing, then Contract Administrator may offset and/or recoup any indebtedness of Contract Administrator to Plan Sponsor (including any and all contractual obligations of Contract Administrator to Plan Sponsor) and apply such offset and/or recoupment toward the payment of Plan Sponsor’s obligations to Contract Administrator, whether Contract Administrator’s indebtedness, or any part thereof, is then due the Plan Sponsor.

5.5 Termination for Invalid Use of Information. Plan Sponsor will use any information Contract Administrator makes available to Plan Sponsor solely for the purpose of administering the Plan and in accordance with applicable law. Plan Sponsor agrees to hold Contract Administrator harmless for any claim, action or loss that may arise at any time in the future out of Plan Sponsor’s unauthorized or unlawful use of any such information. Furthermore, if Plan Sponsor uses the information for another purpose, Contract Administrator will consider that action a material breach. This Agreement will then be subject to immediate termination by written notice of such termination from Contract Administrator to Plan Sponsor.

5.6 Material Breach. A material breach is the failure by one party (the breaching party) to perform or carry out a function or duty required by the terms of this Agreement, where the failure to perform that function or duty materially impairs the ability to perform of the other party (the non-breaching party) or deprives the non-breaching party of a material benefit contemplated under this Agreement. If the non-breaching party determines that a material breach has occurred, it must notify the breaching party in writing of the breach as soon as it is practicable to so notify, and must allow the breaching party ten (10) days to cure or correct the breach. For a material breach that cannot be cured within ten (10) days, in spite of the breaching party’s best efforts, the breaching party need only commence to cure such material breach within said 10-day period and thereafter diligently proceed to cure such material breach. If the breach is not cured or corrected in that ten (10) day period, the non-breaching party may immediately terminate this Agreement.

5.6.1 If either party disputes a claimed material breach or that a material breach has been cured or corrected, it may immediately request dispute resolution, pursuant to the terms of Article V of this Agreement.

5.6.2 Contract Administrator’s termination of this Agreement in accordance with Subsection 5.4.1, 5.4.2 or 5.4.3 shall not be subject to the notice provisions of this Subsection, nor entitle the Plan Sponsor to submit the dispute for resolution pursuant to Article VI, below.

5.7 Effect of Termination. The terms and conditions set forth herein shall be of no further force or effect if this Agreement is terminated, except as follows:

5.7.1 The parties’ rights and obligations intended to survive termination of this Agreement, including Sections [4.1, 4.2], 7.1, 7.2 and 10.2 of this Agreement, shall continue in effect notwithstanding its termination.

5.7.2 Termination of this Agreement, except as provided to the contrary herein, shall not affect the rights, obligations and liabilities of the parties arising out of transactions occurring prior to termination.

5.7.3 The termination of this Agreement does not excuse the Plan Sponsor from forwarding to Contract Administrator any and all fees, monies, reimbursements or Claim Payments accrued through the date of termination.

Upon cancellation or termination of this Agreement pursuant to this Article V, Plan Sponsor has the sole responsibility to notify all Plan Participants of any state or federal conversion or continuation of coverage rights or benefits to which Plan Participants might be entitled. Plan Sponsor acknowledges that it maintains direct and ongoing communication with, and maintains current addresses for, all Plan Participants, which puts Plan Sponsor in the position to be responsible for so notifying Plan Participants. The Contract Administrator has no responsibilities, liabilities, or duties related to this notification.

5.8 Administration after Termination. Plan Sponsor and Contract Administrator may agree on a method by which Contract Administrator will continue to process Run-Out Claims, including, but not limited to, Claim Payments made in accordance with MSP and Medicaid laws. The administration of the processing of Run-Out Claims by Contract Administrator following termination of this Agreement will be subject to Plan Sponsor’s continued reimbursement of Contract Administrator for all Paid Claims in a timely manner and shall continue for the Run-Out Period. In addition, Contract Administrator must receive information it in its sole discretion deems sufficient regarding the Run-Out Claim during the Run-Out Period in order to process the Claim. Run-Out Claims will be processed during the Run-Out Period only if received during the Run-Out Period, irrespective of when the claim was incurred.

5.9 Final Accounting. The parties will conduct a final accounting of all payments, funds transfers, etc., necessary to fulfill all obligations under this Agreement, after the termination of the Agreement, and the ending of any additional Run-Out Period of claims adjudication. As part of the final accounting, the parties will enter into a mutual settlement agreement to terminate further liability under the Agreement.

**ARTICLE VI - DISPUTE RESOLUTION**

6.1 Binding Arbitration. Any dispute related to this Agreement, which the parties are unable to resolve through informal discussion as provided in Section 10.25 , shall be resolved through binding arbitration. The American Arbitration Association shall conduct such arbitration in Burlington, Vermont or in such other location as the parties may agree. The foregoing notwithstanding, the parties may mutually agree in writing upon some other dispute resolution method or venue.

6.2 Award. The arbitrator shall be required to issue a written decision explaining the basis of the decision and the manner of calculating any award. The arbitrator may not award punitive or exemplary damages and must base the decision on the terms of this Agreement and applicable laws. The arbitrator’s decision may be entered and enforced in any State or Federal court. That decision may only be vacated, modified or corrected for the reasons set forth in section 10 or 11 of the United States Arbitration Act, if the award contains material errors of law or is arbitrary and capricious.

6.3 Final Nature of Arbitration. The award of the arbitrator shall be final, and not subject to appeal to any other authority. This does not preclude enforcement.

6.4 Limitations. No civil action may be brought under this Agreement after the expiration of three (3) years from the date on which that cause of action accrued, except to the extent that ERISA Section 413 permits a later date. All actions are subject to Article VI, Dispute Resolution.

**ARTICLE VII – LIABILITY AND INDEMNIFICATION**

* 1. Contract Administrator. Contract Administrator will indemnify and hold harmless Plan Sponsor and its directors, officers, employees and agents, against any and all claims, causes of action, judicial or administrative proceedings, judgments, decrees, settlements, losses, liabilities, damages, penalties, costs and expenses, including reasonable attorneys' fees that arise out of or relate to any act or omission by Contract Administrator involving this Agreement has been determined by a court of competent jurisdiction to be (1) grossly negligent, dishonest, fraudulent or criminal, or (2) in material breach of its obligations under this Agreement.
  2. Plan Sponsor. Plan Sponsor will indemnify and hold harmless Contract Administrator and its respective directors, officers, employees and agents, against any and all claims, causes of action, judicial or administrative proceedings, judgments, decrees, settlements, losses, liabilities, damages, penalties, costs and expenses, including reasonable attorneys' fees that arise out of or relate to any act or omission by Plan Sponsor involving this Agreement has been determined by a court of competent jurisdiction to be (1) grossly negligent, dishonest, fraudulent or criminal, or (2) in material breach of its obligations under this Agreement.
  3. Nothing in this Section 7 will relieve Contract Administrator of its responsibility for the correction of errors in the payment of Claims it makes pursuant to Article IV above.

**ARTICLE VIII – AUDITS**

* 1. Audit. For the purpose of this Agreement, an "audit" is defined as performing a detailed review of Claim transactions for the purpose of assessing the accuracy of benefit determinations. Plan Sponsor shall have the right to audit Contract Administrator's performance of its administrative functions hereunder. Any such audit shall be conducted in accordance with this Article VIII. Contract Administrator is not responsible for paying Plan Sponsor's audit fees or the costs associated with the audit.
  2. Audit Parameters. The Plan Sponsor may conduct audits during normal business hours, in accordance with generally accepted auditing standards. Any such audits shall be conducted in a manner that minimizes disruption to Contract Administrator's day-to-day business operations. The Plan Sponsor shall provide Contract Administrator at least four (4) weeks written notice in advance of the desired audit date, with a complete and accurate listing of the transactions to be pulled for the audit, and with the identification of the proposed auditor. Plan Sponsor may exercise its audit rights hereunder no more frequently than once every twelve months.
  3. Third Party Auditor. Any third party auditor selected by Plan sponsor will be required to sign a confidentiality agreement satisfactory to the Contract Administrator prior to the audit.
  4. Scope. Generally, audits of Claims must be commenced within twenty-four (24) months of the date the Claims were paid. After twenty-four (24) months from the date of the payment, the Plan Sponsor shall not be permitted to include the Claim in any audit.
  5. Proprietary Data. The Plan Sponsor understands and acknowledges that information, data, documentation, or software discovered by Plan Sponsor in the course of or related to the audit contains PHI about Plan Participants ("Plan Participants Health Data") as well as information that is proprietary to the Contract Administrator's business operations ("Proprietary Data"). The Plan Sponsor further understands and acknowledges that all Proprietary Data is confidential and a valuable trade secret of Contract Administrator, and that any disclosure or use of such data for any purpose other than to evaluate the accuracy of Contract Administrator's processing of Claims under this Agreement will cause irreparable harm and loss to Contract Administrator. Proprietary Data includes, but is not limited to, allowance limits, negotiated provider discounts and payments, hospital per-diems, retroactive reimbursement mechanisms, and other negotiated terms between Contract Administrator or its subsidiaries or affiliates and hospital and medical providers. In view of the foregoing, the Plan Sponsor agrees that neither it nor the auditors (internal or external) shall release or disclose to any third party, other than Plan Sponsor's outside attorney's, consultants, and advisors (provided they first execute confidentiality agreements satisfactory to Contract Administrator), any data or information obtained from the Contract Administrator during the course of the audit without first affording Contract Administrator the opportunity to determine whether such data or information includes any Proprietary Data. If it does, Contract Administrator may require the removal of Proprietary Data from the material to be released or disclosed. This provision shall not apply if Plan Sponsor's release or disclosure of Proprietary Data is pursuant to a legal requirement including a court order, government subpoena or regulatory requirement, provided that prior to complying with such a requirement, the Plan Sponsor gives Contract Administrator prompt and written notice of the subpoena to the extent permitted by law.
  6. Release of Information. Plan Sponsor represents and warrants that it has the authority to authorize Contract Administrator to release Plan Participant PHI to the auditors (including third party auditors).

**ARTICLE IX – ERISA**

* 1. General. As defined in Section 3 of ERISA, the term "employee welfare benefit plan" includes any plan, fund or program which is established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical/surgical or hospital care or benefits, or benefits in the event of sickness, accident or disability. The Plan Sponsor hereby acknowledges (i) that an employee welfare benefit plan must be established and maintained through a separate plan document which may include the terms hereof or incorporate the terms hereof by reference, and (ii) an employee welfare benefit plan document may provide for the allocation and delegation of responsibilities thereunder.
  2. ERISA Fiduciary Responsibility. It is understood and agreed that the Plan Sponsor, as “Plan Sponsor” is defined under ERISA, retains complete authority and responsibility for the Plan, its operation, and the benefits provided thereunder, and that Contract Administrator is empowered to act on behalf of Plan Sponsor only to the extent expressly stated in this Agreement or as agreed to in writing by Contract Administrator and Plan Sponsor.

Plan Sponsor has the sole and complete authority to determine eligibility of persons to participate in the Plan.

* 1. Claim Fiduciary. Plan Sponsor and Contract Administrator agree that, with respect to Section 503 of ERISA, as amended, Contract Administrator will be the "appropriate named fiduciary" of the Plan for the purpose of reviewing denied claims under the Plan. Plan Sponsor understands that the performance of fiduciary duties under ERISA necessarily involves the exercise of discretion on Plan Sponsor's part in the determination and evaluation of facts and evidence presented in support of any claim or appeal. Therefore, and to the extent not already implied as a matter of law, Plan Sponsor hereby delegates to Contract Administrator discretionary authority to determine entitlement to benefits under the applicable Plan Documents for each claim received, including discretionary authority to determine and evaluate facts and evidence, and discretionary authority to construe the terms of the Plan. It is also agreed that, as between Contract Administrator and Plan Sponsor, Contract Administrator's decision on any claim is final and that Contract Administrator has no other fiduciary responsibility.
  2. Service Provider. Contract Administrator’s responsibilities under this Agreement are limited to those of a contract claims administrator rendering advice to and administering claims on behalf of the Plan’s plan administrator or fiduciary. As such, Contract Administrator is a service provider, and not a fiduciary with respect to the Plan.
  3. Authority under Plan Document. Plan Sponsor represents and warrants that the Plan Document (pursuant to ERISA sections 402(c)(2) and 405(c)(1)(B)) expressly authorizes Plan Sponsor, as Named Fiduciary (as said term is defined in ERISA), to allocate and delegate certain fiduciary responsibilities for the Plan, and accordingly, that Contract Administrator has the authority to render advice with respect to claims and to administer claims on behalf of the Plan’s Named Fiduciary. Contract Administrator has no other fiduciary authority or responsibility with respect to the Plan.

**ARTICLE X - MISCELLANEOUS PROVISIONS**

10.1 Acceptance by Payment of Fees. Contract Administrator expects that Plan Sponsor will demonstrate its acceptance of the terms of this Agreement by signing below. In the event that Plan Sponsor has not signed the Agreement by the Effective Date, this Agreement will be considered accepted by and binding upon both parties if and when Plan Sponsor makes a payment to Contract Administrator in order to receive the Services described in this Agreement.

10.2 Confidentiality. The parties acknowledge that Confidential Information shall be treated as confidential, proprietary or trade secret information. A party may release Confidential Information to providers or its affiliates, or their respective directors, partners, officers, employees, advisors and other representatives (its “Representatives”) who have a need to know such Confidential Information, after the releasing party informs them of their obligation to maintain the confidentiality of such Information as to third parties. Each party is responsible if its Representative breaches this Section. Neither party shall otherwise release nor disclose such Information to third parties without the other party’s prior written consent, except as required by law. This paragraph shall survive the termination of this Agreement.

Notwithstanding anything herein to the contrary, the following shall not constitute Confidential Information for the purposes of this Agreement: (a) Confidential Information that is or becomes generally available to the public other than as a result of an unauthorized disclosure by a party or its Representatives; (b) Confidential Information that was available to the parties on a non-confidential basis prior to its disclosure by a party or its Representatives; or (c) Confidential Information that becomes available to the parties on a non-confidential basis from a third party, provided that third party is not known to be subject to any prohibition against transmitting that information.

In addition, from time to time, representatives of Plan Sponsor may need access to certain Confidential Information in order to perform its duties under the Plan. Before Contract Administrator will release any Confidential Information regarding a Plan Participant covered under the Plan, Contract Administrator must receive from the Plan Sponsor written authorization to release the Confidential Information to a specific representative.

Additionally, the representative may be required to sign and return Contract Administrator’s current Confidentiality Agreement to Contract Administrator before Contract Administrator is under any obligation to release any Confidential Information.

10.3 Use of Names and Service Marks. The Plan Sponsor agrees to allow Contract Administrator to use the Plan Sponsor’s name and service mark on I.D. cards and other forms necessary to implement this Agreement, and to promote the Plan Sponsor’s relationship with Contract Administrator to potential or existing providers. Contract Administrator shall not use the Plan Sponsor’s name or service mark for any other purpose without the prior written consent of the Plan Sponsor.

The Plan Sponsor agrees that the names, logos, symbols, trademarks, trade names, and service marks of Contract Administrator, whether presently existing or hereafter established, are the sole property of Contract Administrator and Contract Administrator retains the right to the use and control thereof. The Plan Sponsor shall not use Contract Administrator’s name, logos, symbols, trademarks or service marks in advertising or promotional materials or otherwise without the prior written consent of Contract Administrator and shall cease any such usage immediately upon written notice by Contract Administrator or upon termination of this Agreement, whichever is sooner.

10.4 Use of Data**.** Plan Sponsor recognizes and agrees that Contract Administrator and its affiliates may use PHI or other claims data to conduct certain essential functions related to their daily business administration, including quality assurance studies, provider credentialing for their networks, provider fraud and abuse monitoring or investigation, provider profiling or under or over utilization studies and general claims utilization, or cost comparisons and reports or actuarial analyses generated for internal use of Contract Administrator and its affiliates. In addition, the Plan Sponsor understands and agrees that PHI or other claims data may be used by Contract Administrator to defend litigation against it or respond to court orders, subpoenas or regulatory agencies. The information analyzed for quality assurance studies, and general claims utilization or cost comparisons and reports or actuarial analyses generated for internal use will be done in a de-identified format. Notwithstanding any provision of this Agreement to the contrary, any use or disclosure of PHI by Contract Administrator must be consistent with the Business Associate Agreement, attached as Exhibit G. In addition to the preceding authorization of certain uses of PHI or other claims data, Plan Sponsor agrees that Contract Administrator may use and disclose PHI or other claims data for the following purposes, provided all such use or disclosure is consistent with HIPAA Privacy standards: (i) internal exchange and study between and among Contract Administrator and its affiliates for purposes of utilization studies, cost analyses or modeling initiatives, quality assurance, provider profiling, credentialing and network management, fraud and abuse monitoring or investigation, administrative or process improvement and cost comparison studies and reports for actuarial analyses; and (ii) release in de-identified format of claims information to a third party data aggregation service or data warehouse for purposes of utilization studies, cost analyses or modeling initiatives, quality assurance, provider profiling, credentialing and network management, fraud and abuse monitoring or investigation, administrative or process improvement and cost comparison studies and reports for actuarial analyses.

10.5 Amendment. This Agreement may be modified or amended only upon mutual agreement, in writing, signed by the duly authorized officers of the Plan Sponsor and Contract Administrator.

From the effective date of any final regulation or amendment to final regulations with respect to PHI, standard transactions, the security of health information or other aspects of HIPAA applicable to this Agreement, or with respect to aspects of ERISA applicable to this Agreement, this Agreement will automatically amend such that the obligations imposed on Plan Sponsor, the Plan and Contract Administrator remain in compliance with such regulations, unless Contract Administrator elects to terminate this Agreement by providing Plan Sponsor and the Plan notice of termination in accordance with Article V above at least thirty (30) days before the effective date of such final regulation or amendment to final regulations.

10.6 Assignment. Neither party may assign its interest in this Agreement without the prior written consent of the other party.

10.7 Binding Effect of Agreement. The Agreement shall be binding upon and inure to the benefit of the parties, their agents, servants, employees, successors, and permitted assigns unless otherwise set forth herein or agreed to by the parties hereto.

10.8 Impossibility of Performance. If an act or omission by a third party, including governmental entities, providers or vendors, render the performance of this Agreement illegal, impossible or impractical, the affected party shall notify the other of the nature of that act or omission (the “Adverse Event.”) The parties shall meet and, in good faith, attempt to negotiate a modification to this Agreement that minimizes the Adverse Event. Notwithstanding any other provision of this Agreement, if the parties fail to reach a negotiated modification concerning the Adverse Event, then the affected party may immediately terminate this Agreement upon giving written notice to the other party.

10.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

10.10 Entire Agreement. This Agreement, including the Exhibits, contains the entire agreement between Contract Administrator and the Plan Sponsor with respect to the specific subject matter hereof. Any prior agreements, promises, negotiations or representations, either oral or written, relating to the subject matter of this Agreement and not expressly set forth in this Agreement are of no force and effect. The Exhibits to this Agreement include the following:

a. Exhibit A - Summary Plan Description and Plan Document

b. Exhibit B - - Administrative Services Contract Fee Schedule

c. Exhibit C - Duties of and Services Provided by Contract Administrator

d. Exhibit C-1 – Administrative Services Schedule

e. Exhibit D – Inter-Plan Arrangements

f. Exhibit E - Medical Management Services Provided by Contract Administrator

g. Exhibit F - Banking Information

h. Exhibit G – Business Associate Agreement

10.11 Governing Law. This Agreement is subject to and shall be governed by the laws of the United States and State of Vermont, without regard to conflict of laws provisions.

10.12 Inconsistencies.

10.12.1 If the provisions of this Agreement are in any way inconsistent with the provisions of the Plan’s Summary Plan Description, then the provisions of this Agreement shall prevail and the other provisions shall be deemed modified to the extent necessary to give effect to such provisions.

10.12.2 If the provisions of this Agreement are in any way inconsistent with the provisions of the Exhibits, then the provisions of Exhibits shall prevail and the inconsistent provisions of this Agreement shall be deemed modified to the extent necessary to give effect to such provisions.

10.13 Independent Contractors.

10.13.1 This Agreement is not intended to create nor deemed or construed to create any relationship between Plan Sponsor and Contract Administrator other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither the parties nor their respective directors, officers, employees or representatives shall be construed to be the partner, joint venturer, agent, Plan Sponsor, or representatives of the other party.

10.13.2 On behalf of itself and its participants, Plan Sponsor hereby acknowledges its understanding that this Agreement constitutes a contract solely between Plan Sponsor and Contract Administrator which is an independent corporation operating under a license from the Association permitting Contract Administrator to use the Blue Cross and Blue Shield Service Marks in the State of Vermont, and that Contract Administrator is not contracting as the agent of the Association.

10.13.3 The Plan Sponsor acknowledges that Contract Administrator is independent from any provider rendering services to Plan Participants, and that Contract Administrator is not responsible for any acts or omissions by a provider in rendering care or services to a Plan Participant.

10.13.4 Plan Sponsor further acknowledges and agrees that it has not entered into this Agreement based upon representations by any person other than Contract Administrator and that no person, entity, or organization other than Contract Administrator shall be held accountable or liable to Plan Sponsor for any of Contract Administrator’s obligations created under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of Contract Administrator other than those obligations created under other provisions of this Agreement.

10.14 Notices. Any notice required to be given pursuant to this Agreement shall be in writing, sent by certified or registered mail, return receipt requested, or by Federal Express or other overnight mail delivery for which evidence of delivery is obtained by the sender, to Contract Administrator or the Plan Sponsor at the addresses indicated herein, or such other addresses that the parties may hereafter designate. The notice shall be effective on the date the notice was posted.

Director, Sales & Account Management

Blue Cross and Blue Shield of Vermont

P.O. Box 186

Montpelier, Vermont 05602

Director of Human Resources

City of Burlington

179 So. Winooski Ave, Suite 100

Burlington, VT 05401

10.15 No Third Party Rights. Except as specifically provided herein, none of the provisions of this Agreement is intended to create third party rights or status in any person or entity, including Plan Participants, Employees of Plan Sponsor of the Plan, or their respective dependents and beneficiaries.

10.16 Plan Funds. In the event there are any refunds, rebates, reimbursements or other payments representing a return of monies paid on behalf of the Plan and its Plan Participants for services under this Agreement other than funds addressed specifically under Exhibit C, Contract Administrator has the right to set off against amounts otherwise owed by Plan Sponsor.

10.17 Severability. If any provision of this Agreement is declared illegal, void or unenforceable, the remaining provisions shall remain in force and effect, unless the severance of that provision substantially deprives a party of the benefit of its bargain or increases the cost of performing its duties pursuant to this Agreement.

10.18 Subsidiaries and Affiliates. Any of the functions to be performed by Contract Administrator under this Agreement may be performed by Contract Administrator or any of its subsidiaries, affiliates or designees.

10.19 Venue. Subject to Article V above, actions or proceedings instituted by the Plan Sponsor or Contract Administrator against the other hereunder shall be brought in a court of competent jurisdiction located Vermont.

10.20 Waiver of Breach. Waiver of a breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or a different provision.

10.21 Facsimile of Agreement. In the event an original of this Agreement cannot be located, a facsimile copy shall have the same legal effect as an original.

10.22 Captions. The captions and headings that appear in this Agreement, its attachments, and its exhibits are provided for convenience only and in no way define, limit, construe, or describe the scope of the articles or paragraphs which follow them.

10.23 Enforcement. Any delay or inconsistent enforcement of any part of this Agreement will not waive any rights with respect to the enforcement of this Agreement at any future day or limit any remedies which may be sought in any action to enforce any provision of this Agreement. Waiver of a breach of any provisions of this Agreement shall not be deemed a waiver of any breach of the same or a different provision.

10.24 Authorization of Agreement. Contract Administrator and the Plan Sponsor represent and warrant to each other, that this Agreement constitutes a valid and enforceable obligation of Contract Administrator and the Plan Sponsor in accordance with its terms.

10.25 Mediation. Before initiating dispute resolution proceedings pursuant to Article VI, if a claim or controversy arising out of or relating to this Agreement or any claimed breach of this Agreement cannot be resolved by the parties in the normal course of business, each party shall designate a member of its senior management to meet in an attempt to resolve the dispute. If said senior management designees are unable to resolve the dispute within thirty (30) days after the first date on which either party notifies the other of the designation of a member of its senior management hereunder, then either party may proceed with the dispute resolution proceedings described in Article VI.

10.26 No Obligation to Continue Plan. Nothing in this Agreement shall constitute an obligation on part of the Plan Sponsor to continue to offer benefits and, subject to the requirements of Section 3.1, the Plan Sponsor retains the right to terminate and amend the Plan at any time.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Blue Cross and Blue Shield of Vermont City of Burlington

By: By:

Name: Name:

Title: Title:

**ACKNOWLEDGMENT OF ARBITRATION**

The parties understand that this Agreement contains an agreement to arbitrate. After signing this document, each party understands that it will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, the parties agree to submit any such dispute to an impartial arbitrator.

Blue Cross and Blue Shield of Vermont City of Burlington

By: By:

Name: Name:

Title: Title:

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