

## CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_ (the "Effective Date") by and between Blue Cross and Blue Shield of Vermont, Inc. ("BCBSVT"), a Vermont non-profit corporation, and \_\_\_\_\_ ("Account"), a \_\_\_\_\_, for the provision of confidential claims information to Northeast Benefits Management, LLC.

1. Account's signatory represents and warrants that s/he has the full right, authority, and power to commit Account to this Agreement and that no further action is necessary to bind Account to this Agreement. The Designee's signatory represents and warrants that s/he has the full right, authority, and power to commit the Designee to this Agreement and that no further action is necessary to bind the Designee to this Agreement.
2. Account represents and warrants that the Designee has been retained to perform plan administration functions necessary to reimburse Member's under the Account's health reimbursement arrangement ("Functions"). Account further represents and warrants that Functions constitute either "payment" or "health care operations," as defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164 (the "HIPAA Privacy Rule"), as amended, and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act").
3. All information released to the Designee by BCBSVT under this Agreement is deemed to be "Confidential Information," unless explicitly specified otherwise by BCBSVT. Confidential Information consists of claims information that relates to medical expense benefits claims submitted by or on behalf of the Account's employees, retirees, and their eligible dependents who are participants of Account's employee welfare benefit plan (collectively, "Members"), including, but not limited to, medical information, payment information and information regarding BCBSVT policies and procedures. Confidential Information may also include information obtained from other Blue Cross and Blue Shield plans ("Participating Plans") that participate in the administration of Account's employee welfare benefit plan (the "Plan") with regard to Members.
4. Account represents and warrants that the Designee requires the Confidential Information from BCBSVT to conduct Functions. Account and Designee each represent and warrant that any Confidential Information that they require from BCBSVT shall utilize a Limited Data Set, if practicable. Otherwise, Account and Designee shall make reasonable efforts to use the minimum necessary, as defined by the HIPAA Privacy Rule, for performance of Functions and acknowledge that BCBSVT may rely upon such representation and warrantee with respect to any request for Confidential Information.
5. Account authorizes and instructs BCBSVT to release Confidential Information directly to the Designee. The Account acknowledges and agrees that claims processed by BCBSVT are periodically retrospectively adjusted and that BCBSVT and Designee shall not be responsible for any losses resulting from such adjustments. Designee further acknowledges that all Members have received, and all future Members will receive, a notice advising them of their right to opt-out of the direct data exchange between BCBSVT and Designee.
6. The Account represents and warrants that disclosures of Confidential Information to the Designee are for the payment and/or health care operations of the Plan and that the disclosures are permitted under the HIPAA Privacy Rule, including, but not limited to, 45 C.F.R. § 164.506.

7. The Designee may use Confidential Information solely for purposes of performing Functions. The Designee may also disclose Confidential Information to any government entity as required under applicable law, with concurrent notice of such disclosure to BCBSVT to the extent permitted by law.

8. The Designee understands and agrees, warrants, and covenants that (i) any disclosures are limited to the minimum amount of information necessary to accomplish the necessary plan administration functions of the Plan, (ii) any disclosures are made in a manner calculated to afford maximum protection of the confidential nature of Confidential Information, and (iii) any disclosures are made in a manner that does not identify the individuals at issue using a Limited Data Set, as defined in the HIPAA Privacy Rule. The Designee warrants, covenants and agrees that if any third-party receives Confidential Information from the Designee the disclosure shall be made (i) only for the purposes of and in an manner consistent with this Agreement, and (ii) only after such recipient has agreed in writing to abide by the same restrictions and conditions contained in this Agreement that apply to the Designee with respect to such information, including, but not limited to, abiding by all applicable federal, state, and local laws that govern the receipt and handling of Confidential Information.

9. The Account and the Designee each understand and agree that the Confidential Information provided under the terms of this Agreement (i) includes information that is proprietary to BCBSVT, Participating Plans, and/or their respective providers, (ii) may have significant competitive or market value, and/or (iii) is personal and confidential to Members and/or protected from disclosure under confidentiality laws, including but not limited to the HIPAA Privacy Rule. Account and the Designee each agree to preserve and protect the Confidential Information's proprietary and/or confidential nature during the transmission, handling, or other use of the Confidential Information. Such protection includes maintaining the Confidential Information in a highly secured environment within the respective entities that is accessible only by those personnel with a "need to know." Account and the Designee each recognize and acknowledge that an unauthorized disclosure or other breach of this Agreement, or any other violation of applicable federal, state, or local law in connection with the Confidential Information, constitutes irreparable harm to (i) BCBSVT and/or its respective providers, (ii) and/or (ii) Members, and that such may not be compensable solely by monetary damages. The Account and the Designee each agrees that, in addition to any other relief to which BCBSVT may be entitled under this Agreement or as a matter of law, BCBSVT may obtain an injunction in any court of competent jurisdiction that enjoins either the Account, the PSA Plan, the Health Plan, or the Designee from any improper disclosures, breach of this Agreement, or violation of applicable law in connection with the Confidential Information, and that in such event neither the Account, the Plan, nor the Designee will oppose in whole or in part entry of such an order.

10. This Agreement and all rights and obligation hereunder are governed by and interpreted in accordance with the laws of the State of Vermont, without reference to any applicable conflict of law provisions thereof. The parties agree that the venue and jurisdiction in which any dispute shall be resolved will be the proper state or federal court in the State of Vermont, and, accordingly, each party agrees to submit to the personal jurisdiction of such court.

11. This Agreement is binding upon and inures to the benefit of the parties and their successors and assigns. Any changes, amendments, or alterations are not effective unless mutually agreed upon in writing by authorized representatives of the parties.

12. This Agreement may not be assigned or transferred, in whole or in part, by any party without the prior written agreement of the other parties, which consent may not be unreasonably withheld; provided, however, BCBSVT and

Designee may, without prior approval, assign its rights and obligations under this Agreement to any affiliates, successors or wholly-owned subsidiaries as a result of a change in corporate form.

13. A waiver of a breach of this Agreement shall not be construed to be a continuing waiver for a similar breach. A waiver must be in writing, and it must be signed by the authorized representatives of all parties to be effective.

14. This Agreement does not create any relationship between BCBSVT and any other party other than that of independent parties contracting with each other solely for the purpose of effecting this Agreement.

15. The Account must provide written notice to BCBSVT as soon as possible, but in no regard more than five (5) days after the Designee ceases to perform Functions for the PSA Plan.

16. Nothing contained in this Agreement creates an obligation on the part of BCBSVT to provide Confidential Information to any party. The parties agree and acknowledge that BCBSVT may immediately cease to provide any Confidential Information at any time (i) if the administrative services agreement or the premium account agreement between BCBSVT and Account relating to the Plan terminates, (ii) if the Account no longer requests BCBSVT to provide Confidential Information or if the Designee is no longer providing Functions, (iii) if the agreement for services between the Designee and the Account terminates, or (iv) in the event that any local, state, or federal law, including applicable rulings of a court of competent jurisdiction or rulings, opinions, or findings of a regulatory agency is found to prohibit BCBSVT from providing Confidential Information in the manner provided for in this Agreement. The Account and the Designee each acknowledge and agree that BCBSVT may, in its sole discretion, withhold HIV/AIDS information, mental health information, substance abuse information, or sexually transmitted disease information in the absence of informed, written consent of the Member.

17. The confidentiality and proprietary provisions of this Agreement continue in full force and effect even after BCBSVT no longer provides Confidential Information under this Agreement and/or after this Agreement is canceled, expires or is terminated for any reason.

18. All notices, requests and demands are deliverable as follows:

In the case of the Account,

[ACCOUNT NAME] \_\_\_\_\_

Attn: [Contact Name] \_\_\_\_\_

[STREET ADDRESS] \_\_\_\_\_

[CITY] [STATE] [ZIP CODE] \_\_\_\_\_

In the case of the Designee,

Northeast Benefits Management, LLC

Attn: Daniel Jacobs

620 Hinesburg Rd, Ste 120

South Burlington, VT 05403

or in the case of BCBSVT

Blue Cross and Blue Shield of Vermont  
Attn: Legal Department  
445 Industrial Lane  
Barre, VT 05601

19. The Account, the Plan and the Designee each hereby expressly acknowledge their respective understanding that this Agreement constitutes a contract between themselves and BCBSVT, 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 BCBSVT to use the Blue Cross and Blue Shield Service Marks in the State of Vermont, and that BCBSVT is not contracting as the agent of the Association. The Account, the Plan and the Designee each further acknowledge and agree that they have not entered into this Agreement based upon representations by any person other than BCBSVT and that no other person, entity, or organization other than BCBSVT shall be accountable or liable to the Account, the Plan or the Designee for any of BCBSVT's obligations to the Account, the Plan or the Designee created under this Agreement. This paragraph does not create any additional obligations whatsoever on the part of BCBSVT other than those obligations created under other provisions of this Agreement.

20. No third party beneficiary status is hereby created in any entity that is not a signatory to this Agreement (other than the signatory's successors or assigns).

IN WITNESS WHEREOF, the parties have signed this Agreement on the dates indicated below.

BLUE CROSS AND BLUE SHIELD OF  
VERMONT

Northeast Benefits Management, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Daniel Jacobs

Title: \_\_\_\_\_

Title: Principal

[Employer/Acct Name] \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_