

**SPACE USE AGREEMENT**

This Space Use Agreement ("Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2019, by and between MAXIMUS, Inc. ("MAXIMUS"), and Tulare County Health & Human Services Agency, ("Agency").

MAXIMUS has been awarded the State of California Health Care Options Contract # 17-94437 (the "HCO Contract") by the California Department of Health Care Services to provide health plan education and enrollment services.

The parties desire to cooperate to provide adequate workspace for the preparation and presentation of the Health Care Options materials at designated Agency facilities in accordance with the HCO Contract requirements.

In consideration of the mutual terms, conditions and covenants set forth herein, the parties agree as follows:

1. MAXIMUS Responsibilities. MAXIMUS agrees to provide the services as set forth in the Exhibit 1.
2. Agency Responsibilities. The Agency agrees to provide the workspace in its facilities, equipment, and services as set forth in Exhibit 2.
3. Compensation. The parties shall each provide the services, workspace, and equipment hereunder in-kind, and neither party shall be obligated to compensate the other party in any other manner.
4. Independent Contractors. This Agreement shall not constitute an employment, joint venture, partnership, agency or similar arrangement, and nothing contained herein shall be construed as providing for the sharing of profits or losses arising from the efforts of either or both of the parties hereto. Each party to this Agreement shall act as an independent contractor, and neither party shall have the power to act for or bind the other party except as expressly provided for herein. Each party assumes sole responsibility for determining the manner and means of its performance hereunder.
5. Term. This Agreement shall be effective as of October 1, 2018 and shall continue in effect so long as MAXIMUS holds the HCO Contract, unless earlier terminated as provided in Paragraph 6 below.
6. Termination. Either party shall have the right to terminate this Agreement for any reason upon thirty (30) days' notice to the other party. This Agreement may also be terminated by MAXIMUS without prior notice if (i) the HCO Contract is terminated for any reason or (ii) the State of California directs MAXIMUS to terminate this Agreement.
7. Confidentiality; Non-Solicitation. The parties acknowledge that they may have access to confidential information of the other party including, but not limited to, information concerning operations, customers, business and financial condition, as well as personal and health information of its clients and other information as to which a party has an obligation to maintain confidentiality (collectively referred to as "Confidential Information"). The parties agree not to disclose, or to use or let others use, any Confidential Information, whether or not designated confidential or proprietary, acquired in the course of this Agreement. Confidential Information

does not include information that is (a) previously known to the Receiving Party, free from any obligation to keep it confidential, (b) publicly disclosed by the Disclosing Party either prior to or subsequent to the receipt by the Receiving Party of such information, (c) independently developed by the Receiving Party without any access to Confidential Information, or (d) rightfully obtained from a third party lawfully in possession of Confidential Information who is not bound by confidentiality obligations to the Disclosing Party. The Receiving Party may disclose Confidential Information if the Receiving Party is required to do so under applicable law, rule or order; provided that the Receiving Party, where reasonably practicable and to the extent legally permissible, provides the Disclosing Party with prior written notice of the required disclosure. At the request and option of the Disclosing Party, or in the event of termination or expiration of this Agreement (or any part thereof), the Receiving Party agrees to promptly: (a) return to the Disclosing Party the Confidential Information; or (b) destroy or permanently erase the Confidential Information and, if the Disclosing Party requests that Confidential Information be destroyed or permanently erased, then the Receiving Party shall acknowledge in writing that all such Confidential Information has been destroyed or permanently erased within five (5) days of such destruction or permanent erasure. Notwithstanding the foregoing, the Receiving Party may retain copies of the Confidential Information to the extent required to comply with applicable legal and regulatory requirements, provided, however, that such Confidential Information will remain subject to the terms and conditions of this Agreement.

8. Indemnification. MAXIMUS shall defend, indemnify and hold harmless Agency from and against damages, liability and costs (including reasonable attorney's fees) for bodily injury or damage to real or tangible personal property to the extent directly caused by the negligent actions or willful misconduct of MAXIMUS, its employees, or agents. MAXIMUS shall not be responsible for any damages or liability to the extent resulting from the negligence or willful misconduct of Agency, its employees, consultants or agents.

9. Insurance.

At all times during the term of this contract, Contractor shall obtain, pay for, maintain, and require any subcontractors to maintain insurance for the following coverages and amounts below. The contractor's and subcontractor's (if any) insurance carriers must be licensed to conduct business in the State(s) where the work is being performed, and must have an A.M. Best rating of at least A- VII or higher.

COMMERCIAL GENERAL LIABILITY insurance for Bodily Injury and Property Damage for limits not less than \$1,000,000 per occurrence/\$2,000,000 aggregate including coverage for Contractor's premises operations, independent contractors, contractual liability, products/completed operations, personal and advertising injury. The State shall be named as an Additional Insured, and the policy shall include a Waiver of Subrogation.

BUSINESS AUTOMOBILE LIABILITY insurance with a combined single limit of not less than \$1,000,000 for Bodily Injury and Property Damage for all owned, non-owned, leased and hired vehicles. The State shall be named as an Additional Insured, and the policy shall include a Waiver of Subrogation.

WORKERS' COMPENSATION AND EMPLOYERS LIABILITY insurance in the State(s) where the work will be performed with statutory limits for workers' compensation and the following limits for employers liability: bodily injury by accident each accident \$1,000,000; bodily injury by disease policy limit \$1,000,000; bodily injury by disease each employee \$1,000,000. A Waiver of Subrogation shall be included.

**MISCELLANEOUS PROFESSIONAL LIABILITY in the amount of \$2,000,000.**

Coverage for wrongful acts, errors and omissions committed in performing professional services rendered with limits of at least \$2,000,000 to \$5,000,000 per occurrence and in the aggregate. Any retroactive date or prior acts exclusion must predate both the date of this agreement and any earlier commencement of any services. Coverage must be maintained for a minimum of three (3) years after final completion of the services or work provided by the Vendor.

**Technology Errors and Omissions Liability (if applicable)**

Coverage for wrongful acts, errors and omissions committed while performing technology professional services rendered with limits of at least \$2,000,000 to \$5,000,000 per occurrence and in the aggregate. Any retroactive date or prior acts exclusion must predate both the date of this agreement and any earlier commencement of any services. Coverage must be maintained for a minimum of three (3) years after final completion of the services or work provided by the Vendor.

**Cyber Liability / Security and Privacy Liability**

Coverage for security and privacy liability which shall also include coverage for confidentiality/data breaches, cyber extortion, event management, network interruption, and civil fines and penalties imposed from a regulatory action, with minimum policy limits of \$2,000,000 to \$5,000,000 per occurrence and in the aggregate. Any retroactive date or prior acts exclusion must predate both the date of this agreement and any earlier commencement of any services. Coverage must be maintained for a minimum of three (3) years after final completion of the services or work provided by the Vendor.

The Contractor will submit a standard ACORD Certificate of Insurance, including all required endorsements or policy wording, signed by an authorized agent or representative of the insurance company(ies) evidencing the above required policies and limits are in effect.

All policies shall state insurance will be primary and noncontributory with any other applicable insurance or any insurance maintained by the State.

No cancellation or non-renewal of the policies, except for professional and cyber liability, shall be effected without first giving 30 days advanced written notice to the State and this should be included on the Certificates of Insurance.

The Contractor shall bear the cost of all exclusions and limitations in the insurance policies and shall pay all deductibles or self-insured retentions.

The Parties expressly understand and agree that any insurance coverage and limits furnished by Contractor or any subcontractors will in no way limit their liabilities and responsibilities specified within the Subcontract or Contract or by applicable law.

Failure by the State to receive, review, or accept any Certificates of Insurance or other insurance information shall not waive the Contractor's and any subcontractor's responsibility to completely comply with the insurance requirements stated herein.

10. Compliance. Each party shall comply with all federal, state and local statutes, regulations, ordinances and rules applicable to their performance of this Agreement relating, directly or indirectly, to their performance hereunder.
11. Survival. Paragraphs 7 and 8 shall survive the expiration or termination of this Agreement.
12. Disputes. The parties will try in good faith to resolve any dispute internally at the lowest levels. If a dispute cannot be resolved via internal discussions, the parties may agree to non-binding mediation by a mediator acceptable to each party or by resort to a court of competent jurisdiction. Mediations will be held in a local forum convenient to the Agency. either party. All litigation arising under this Agreement shall be filed in a court of competent jurisdiction in Sacramento, California. The parties agree that California law shall apply. .
13. Amendment; Assignment. This Agreement may only be amended by a written document signed by both parties. This Agreement shall not be assigned by a party without the prior written approval of the other party.
14. Limitation of Liability. In no event shall either party be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought even if a party has been advised of the likelihood of such damages, and notwithstanding any failure of essential purpose of any limited remedy.

Any claim by one party against the other relating to this Agreement must be made in writing and presented within one (1) year of the expiration or termination of this Agreement. The total liability of one party to the other for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause whatsoever shall not, in the aggregate, exceed \$100,000.00. This limit on liability shall not apply to claims for bodily injury or damage to real or tangible personal property to the extent caused by the negligence or willful misconduct of party, its employees, agents, or contractors.

15. Property.
- a. Workspace. The workspace provided by the Agency shall be clean, safe and habitable, and reasonably suitable for the intended use by MAXIMUS for the HCO services it will provide. The Agency shall be responsible for all utilities, HVAC, repairs (except for damages caused by MAXIMUS negligence or abuse), maintenance, and janitorial services. Upon termination of this Agreement, MAXIMUS shall promptly return the workspace in the same condition as when it was provided by the Agency, reasonable wear and tear excepted.
  - b. Equipment provided by the Agency shall be in good working order, serviceable, and reasonably suitable for the intended use by MAXIMUS for the HCO services it will provide. The Agency will be responsible for normal maintenance, repair, and replacement (except for damages caused by MAXIMUS negligence or abuse). Upon termination of this Agreement, MAXIMUS shall promptly return the equipment in the same condition as when it was provided by the Agency, reasonable wear and tear excepted.

16. **Transfer.** The rights granted to MAXIMUS shall not be assigned, sold, encumbered or transferred by MAXIMUS in whole or in part without the express written consent of the Agency, which may be withheld in the Agency's sole discretion. Any purported transfer by MAXIMUS in violation of these restrictions will confer no rights on any other party and will, at Agency's sole option, be void.

17. **Notices.** All notices under this Agreement shall be in writing and shall be delivered by personal service, facsimile or certified mail, postage prepaid, or overnight courier to parties indicated below. Any notice sent by certified mail shall be deemed to have been given five (5) days after the date on which it is mailed. All other notices shall be deemed given when received. No objection may be made to the manner of delivery of any notice actually received in writing by an authorized agent of a party.

<p><b>For MAXIMUS:</b></p> <p>Benjamin R. Coss          Project Director          11050 Olson Drive, Suite 100          Rancho Cordova, CA 95670          phone: 916-364-6610</p>	<p><b>For Agency:</b></p> <p>Vienna Barnes          Deputy Director          Tulare County Health &amp; Human Services          Agency          5957 S. Mooney Blvd.          Visalia, CA 93277          phone: 559.624.8073          fax:          email: vbarnes@tularehhsa.org</p>
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18. **Waiver, Modification and Amendment:** No provision of this Agreement may be waived unless in writing, signed by all of the parties hereto. Waiver of any one provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other provision. This Agreement may be modified or amended only by a written Agreement executed by the parties hereto.

19. **Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any manner.

20. **Entire Agreement:** This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior discussions, representations and understandings, whether oral or written.

MAXIMUS, Inc.

Date: March 21, 2019

By Charles K. Sweeney II

Print Name Charles K. Sweeney II

Title Vice President, Contracts

Date: 3/22/19

By David Francis

Print Name David R. Francis

Title Secretary

[Pursuant to Corporations Code section 313, County policy requires that contracts with a Corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a Limited Liability Company be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

**COUNTY OF TULARE**

Date: \_\_\_\_\_

By \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By \_\_\_\_\_  
Deputy Clerk

Approved as to Form  
County Counsel

By [Signature] 4/4/2019  
Deputy

Matter # 20181640

Confidential

**SPACE USE AGREEMENT**

**Exhibit 1**

**MAXIMUS Responsibilities**

MAXIMUS, under contract with the Department of Health Care Services shall utilize the space/equipment solely to:

- Provide education/outreach services to Medi-Cal applicants and beneficiaries on the Health Care Options (HCO) Program.
- Provide, trained, culturally and linguistically capable Enrollment Services Representatives to conduct scheduled HCO presentations under a mutually agreed upon published schedule.
- Develop and implement a HCO referral document for local agency use for Medi-Cal applicants and beneficiaries in the mandatory/voluntary HCO Medi-Cal eligibility codes.
- Adhere to all rules and regulations of the providing facility.
- Use the space/equipment in a safe and professional manner.
- Provide necessary training for all agency designated staff on the HCO Program and its services for Medi-Cal eligibles.

**SPACE USE AGREEMENT**

**Exhibit 2**

**Agency Responsibilities**

- Provide adequate confidential workspace for preparation and presentation of Health Care Options (HCO) material.
- Provide, as needed, telephone, photocopy, and fax access; usage of which is limited to the needs of the HCO Program.
- Provide access to Internet connectivity/outlet with the following requirements:

MAXIMUS Enrollment Service Reps (ESRs) require physical access to attach a MAXIMUS owned and controlled laptop computer to a County office local area network. In addition, the firewall rules identified below are required for MAXIMUS ESRs to perform key job functions at select County locations.

- Ports that need to be enabled thru firewalls and routers to enable Outbound connections to MAXIMUS VPN site URL: [vpn.maximus.com](http://vpn.maximus.com)

<b>Application</b>	<b>Protocol</b>	<b>Port(s)</b>
FTP	TCP	20, 21
ISAKMP, IPSec NAT	UDP (DTLS)	443
HTTP	TCP	80, 8080
HTTPS	TCP	8443

- Provide furniture (desk, table, and chair) for HCO staff member(s) as well as locked desk/file area for confidential documents.
- Permit posting of State approved signage/materials as designated by the Department of Health Care Services/MAXIMUS.
- Establish a HCO referral system for Medi-Cal eligibles/beneficiaries to the HCO Enrollment Services Representative.
- In the event of an emergency or to discuss issues regarding MAXIMUS on-site employees, please contact Benjamin Coss, Project Director at (916) 364-6610.