

B. Table of Contents

The City and Contractor hereby agree to the terms and conditions of this Agreement.

This Agreement consists of the following sections:

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C. Signature Page

IN WITNESS HEREOF, the City and Contractor have made and executed this Agreement in multiple copies, each of which is an original.

CONTRACTOR

WITNESS:

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS
Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Human Resources Director

City Controller

City Purchasing Agent

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

Senior Assistant City Attorney
L.D. File No. _____

II. DEFINITIONS

The definitions provided in the Policy are incorporated herein. Additionally, as used in this Agreement, the following terms shall have meanings set out below:

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Agreement" means this Agreement for Professional Services between Contractor and City.

"Agreement Term" is defined in Article V.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means that date shown as the date countersigned by the City Controller on the signature page of this Agreement.

"Director" shall mean the Human Resources Director, or such person as he or she shall designate.

"Section 125 Plan(s)" or "FSA Plan(s)" shall mean the City's Dependent Care Reimbursement Arrangement and the City's Employees' Health Care Reimbursement Arrangement, respectively, under Section 125 of the Internal Revenue Code.

III. DUTIES OF CONTRACTOR

A. Scope of Services

Flexible Spending Accounts ("FSA"). The City desires that Contractor, as its FSA Third-Party Administrator (TPA), furnish reimbursement services within a framework of policies, interpretations, rules, practices and procedures (the "Reimbursement Practices and Procedures") made and established by the City in: (i)

receiving and processing requests for benefits from participants under the FSA Plans (“Requests”) and (ii) disbursing benefit payments from the City’s funds for eligible expenses under the Flexible Spending Account provisions of the FSA Plans. The reimbursement services shall be provided as set out in Exhibit “A”- Scope of Services - Reimbursement Services for the City’s Health and Dependent Care Flexible Spending Accounts.

B. Coordinate Performance

Contractor shall coordinate all of its performance with the Director and such other person(s) as the Director designates. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

C. RELEASE

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE “CITY”) FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY’S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY’S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

D. INDEMNIFICATION

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL

CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) CONTRACTOR AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, ("CONTRACTOR")) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**
- (3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

INDEMNIFICATION – SUBCONTRACTOR’S INDEMNITY

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.

E. INDEMNIFICATION - PROCEDURES

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to

whether or not it will defend the claim. If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City’s full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

F. Insurance

(a) **Risks and Limits of Liability.** Contractor shall maintain the following insurance coverages in the following amounts:

<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	<ul style="list-style-type: none"> Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> Bodily Injury by Accident \$100,000 (each accident) Bodily Injury by Disease \$100,000 (policy limit) Bodily Injury by Disease \$100,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	<ul style="list-style-type: none"> Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$1,000,000 aggregate
Automobile Liability	<ul style="list-style-type: none"> \$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability	<ul style="list-style-type: none"> \$1,000,000 per occurrence; \$1,000,000 aggregate

Excess Liability applicable each to CGL, and Auto	• \$1,000,000
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

(b) **Insurance Coverage.** At all times during the term of this Agreement and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

(c) **Form of insurance.** The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's

Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

(d) **Required Coverage.** The City shall be an Additional Insured under this Agreement, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Contract provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract.

All certificates of insurance submitted by Contractor shall be accompanied by endorsements for 1) Additional Insured coverage in favor of the City for Commercial General Liability and Automobile Liability policies, and 2) Waivers of Subrogation in favor of the City for Commercial General Liability, Automobile Liability and Workers' Compensation/Employers' Liability policies. The Director will consider all other forms on a case-by-case basis.

(e) **Notice. CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his or her

sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

G. Other Insurance

Contractor will, upon request, furnish to the City an affidavit that Contractor is in full compliance with Social Security and Unemployment Compensation Insurance, to the extent such provisions are applicable to Contractor's operations hereunder.

H. Warranties

All Contractor's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence and care of the services and products of the type to be provided by Contractor under this Agreement.

I. Confidentiality

Contractor, its agents, employees, contractors and subcontractors shall hold all City information, data, and documents (collectively, "the Information") that they receive, or to which they have access, in strictest confidence. Contractor, its agents, employees, contractors and subcontractors shall not disclose, disseminate, or use the Information except as approved in writing by the Director. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors which bind them to the terms in this Section.

J. Use of Work Products

(1) The City may use all notes, plans, computations, tabulations, exhibits, photographs, reports, underlying data and other work products (collectively the "Documents") that Contractor prepares or obtains under this Agreement.

(2) Contractor warrants that it owns the copyright to the Documents.

(3) Contractor shall deliver the original Documents to the Director on request. Within five working days after this Agreement terminates, Contractor shall deliver to the Director the original Documents, and all other files and materials Contractor produces or gathers during its performance under this Agreement.

K. Licenses and Permits

Contractor shall obtain and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. Contractor shall maintain all required professional licenses during the Agreement Term. Any failure of Contractor to maintain such professional licenses or any revocation or suspension thereof, even if probated, shall entitle the Director in his sole discretion, to immediately terminate the Contract. Contractor shall immediately notify the Director of any suspension, revocation or other detrimental action against any license, permit or certificate required hereunder.

L. Compliance with Laws

Contractor shall comply with all applicable State and federal laws and regulations and all provisions of the City of Houston Charter and Code of Ordinances.

M. Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.

N. Performance Standards

Contractor represents and warrants that it will pay the "Amount At Risk" on a FSA Plan Quarter basis and a FSA Plan Year basis, as provided in the table below if it does not at least match the Performance Standards for each such time period.

<i>Performance Guarantee</i>	<i>Amount at Risk</i>
Correctly pay 98% of all Clean Reimbursement Requests within five (5) work days after the receipt of reimbursement documents.	<i>\$1,000/quarter</i>
Correctly pay 100% of all Clean Reimbursement Requests within ten (10) work days after the receipt of reimbursement documentation.	<i>\$1,000/quarter</i>
Notify the Participant in writing that a claim has been denied within ten (10) work days after the receipt of reimbursement request.	<i>\$500/quarter</i>
Provide the Participant with monthly reports summarizing previous period debit card activities within ten (10) calendar days after the preceding month.	<i>\$500/quarter</i>
Maintain accurate FSA Health Care Reimbursement account balance information by providing the Director or designee with monthly reports within ten (10) calendar days after the preceding month such as Deposit and Claims Reports and others as mutually agreed.	<i>\$500/quarter</i>
Deactivate debit card immediately upon notice from the City of Houston, but in no event more than two (2) business days of a receipt of notice that Participant is no longer employed by City or has ceased to satisfy eligibility requirements. Provide monthly report of deactivated debit cards.	<i>\$500/quarter</i>
<i>New Contractor Only</i>	<i>Amount at Risk</i>
Implementation Services to be measured and reported one (1) month after the effective date of each plan year beginning May 1: (a) Mail debit cards for receipt by Participant by May 1; (b) Service Center ready to respond to inquiries effective on or before May 1; (c) Toll free customer service telephone number operational on or before May 1; (d) all claims administration services to be fully operational by effective date of May 1.	<i>\$1,000 annually</i>
Provide Administration Manual to the City of Houston on or before contract effective date.	<i>\$250 (one-time)</i>

Note: A “Clean Reimbursement Request” is one in which all documentation needed by the Contractor has been executed and submitted.

Contractor shall report in writing to the Director within 30 days immediately following the end of a FSA Plan Quarter whether the quarterly performance standards were met.

Contractor shall report in writing to the Director within 60 days immediately following the end of a FSA Plan Year whether the annual performance standards have been met. Any Amounts at Risk due from Contractor shall be due and payable August 1 of the successive FSA Plan year. The Director may extend the period(s) of time within which all or any report due under this provision is scheduled to be delivered to the Director.

O. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "C", together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "D".

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug

Policy Compliance Declaration in a form substantially similar to Exhibit “E”. Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

P. Pay or Play

The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7-Revised, as amended from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7-Revised and shall comply with its terms and conditions.

Q. HIPAA Compliance

The parties acknowledge that Contractor will be exposed to protected health information and electronic protected health information as those terms are defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended, and Subtitle D of the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, in its administration of the City Health Care Reimbursement flexible spending account.

Therefore, Contractor shall execute and return a HIPAA Business Associate Agreement in substantially the form as attached in Exhibit “F” to this Agreement with Contractor’s execution of this Agreement.

IV. DUTIES OF CITY

A. Payment Terms

Subject to all terms and conditions of this Agreement, the City shall pay Contractor for services in accordance with the Fee Schedule as set out in Exhibit "B", attached hereto. The fees specified in Exhibit "B" shall be guaranteed for the initial three-year term and the two one-year renewal option years. Such fees shall only be payable from certain Allocated Funds, as provided in Section B of this Article.

The City shall pay Contractor on the basis of monthly invoices submitted by Contractor and approved by the Director, showing the services performed and the attendant fees. The City shall make payment to Contractor at its address of notices within thirty (30) days of the receipt of an approved invoice.

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

B. Limit of Appropriation

(1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

(2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$_____ to pay money due under this Agreement (the

"Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:

- (3) The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

\$ _____

- (4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

C. Access to Data

The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents in the possession or control of the City or available to it that are reasonably necessary for Contractor to perform under this Agreement.

The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor's use.

V. TERM AND TERMINATION

A. Agreement Term

This Agreement shall become effective on May 1, 2016, and shall remain in effect for three years, unless sooner terminated, as provided for in the Agreement ("Initial Term").

B. Renewals

If the Director, at his or her sole discretion, makes a written request for renewal to Contractor at least 30 days before expiration of the then-current term, and if sufficient funds are allocated, then, upon expiration of the Initial Term, this Agreement is renewed for two (2) successive one-year terms each upon the same terms and conditions.

C. Termination for Cause

If Contractor defaults under this Agreement, the Director may terminate this Agreement after providing Contractor written notice and an opportunity to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies, which exist now or in the future. Default by Contractor occurs if:

- (1) Contractor fails to perform any of its material duties under this Agreement;
- (2) Contractor becomes insolvent;

(3) All or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

(4) A receiver or trustee is appointed for Contractor.

If a default occurs and the Director determines that the City wishes to terminate the Agreement, then the Director must deliver a written notice to Contractor describing the default and the proposed termination date. The date must be at least thirty (30) days after Contractor receives notice. The Director, at his or her sole option, may extend the termination date to a later date. If Contractor cures the default before the proposed termination date, then the proposed termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date, at no further obligation of the City.

To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

D. Termination for Convenience by the City

The Director may terminate this Agreement at any time by giving 90 days written notice to Contractor. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies, which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed under this

Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section V. unless the fees exceed the Allocated Funds remaining under this Agreement.

TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

E. Termination of Reimbursement Services of Contractor.

a. Reimbursement services for the FSA Plans shall terminate upon the earliest of the following dates:

(1) The end of a term of the Agreement.

(2) At the option of Contractor, the date upon which the Employer fails to transfer sufficient funds to Contractor (upon request by Contractor) to pay all valid Requests pending under the FSA Plan. Contractor shall promptly communicate its election of this option to the Employer and employer shall have five (5) business days from receipt of written notice of the default to correct the default.

(3) Any other date mutually agreeable to the Employer and Contractor.

b. Upon termination of this Agreement, Contractor shall cease the processing of all Requests then in its possession, return any undistributed funds to the Employer, and make all records relating to Requests in process reasonably available to the Employer. If

the termination occurs pursuant to Section V.E.(a)(1) above, Contractor shall process all run-off Requests. Thereafter, the Employer shall be responsible for all aspects of Reimbursement Request processing and Section 125 Plan administration.

VI. MISCELLANEOUS

A. Independent Contractor

Contractor is an independent contractor, and shall perform the services provided for in this Agreement in that capacity. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are employees or subcontractors of Contractor and not the City's employees, agents or subcontractors for any purpose whatsoever. Contractor shall be solely responsible for the compensation of all of its personnel, including but not limited to the withholding of income, social security, other payroll taxes, and all workers' compensation benefits coverage.

B. Force Majeure

(1) Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, strikes, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as

inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to extra reimbursable expenses or payment.

- (2) This relief is not applicable unless the affected party does the following:
 - (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
 - (b) provides the other party with prompt written notice of the cause and its anticipated effect.

(3) The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days.

(4) The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.

(5). If the Force Majeure continues for more than ____ days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement.

CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

The Agreement merges the prior negotiations and understandings of the parties and embodies the entire agreement of the parties. No other agreements, assurances, conditions, covenants (expressed or implied) or other terms of any kind, exist between the Parties regarding this Agreement.

E. Written Amendment

Unless otherwise provided herein, the Agreement may be amended only by written instrument duly executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Contractor or mandate by or due to a change in State or federal law governing Section 125 Plans. The Director or the City Representative is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement shall be construed in accordance with the laws of the State of Texas, the City Charter and Code of Ordinances of the City of Houston, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement shall be Harris County, Texas.

G. Notices

All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States

Express Mail, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

H. Captions

Captions contained in this Agreement are for reference only, and therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

J. Inspections and Audits

Representatives of the City shall have the right to perform, or cause to be performed, audits of Contractor's books and records that are undertaken in connection with this Agreement. Contractor shall be required to keep such books and records available for such purpose for at least five (5) years after the ceasing of its performance under this Agreement. Nothing in this

provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

K. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

L. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

M. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

N. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors; however, this provision does not alter the restrictions of assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

O. Business Structure and Assignment

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause,

however, prevents the assignment of accounts receivable or the creation of a security interest under §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, under Section 9.102 of the Code, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

P. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

Q. Publicity

Contractor shall make no announcement or release of information concerning this Agreement until such release has been submitted to and approved in writing by the City.

R. Conflicts of Interest

If an actual or potential conflict arises between the interests of the City and the interests of other clients represented by Contractor, Contractor shall immediately notify the Director by facsimile transmission or telephone. If the Director in his or her sole discretion consents to Contractor's continued representation of such other clients, he or she shall so notify Contractor in writing. If the Director does not issue written consent within three (3) business days of receipt of Contractor's notice, Contractor shall immediately terminate its representation of the other client whose interests are or may be in conflict with those of the City.

S. CONTRACTOR DEBT

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, HE OR SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

EXHIBIT "A"

SCOPE OF SERVICES

REIMBURSEMENT SERVICES FOR CITY OF HOUSTON EMPLOYEES' HEALTH CARE REIMBURSEMENT ARRANGEMENT AND DEPENDENT CARE REIMBURSEMENT ARRANGEMENT

A. Background

On May 1, 1994, the City of Houston (the "City"), established the City of Houston Employees' Section 125 Plan (the "Section 125 Plan") under Section 125 of the Internal Revenue Code of 1986, as amended (the "Code"). Subsequent thereto, the City adopted a Health Care Reimbursement Arrangement, which has been amended from time to time, and a Dependent Care Reimbursement Arrangement. Effective May 1, 2011, the City adopted an Amended and Restated City of Houston Employees' Health Care Reimbursement Arrangement and a Dependent Care Reimbursement Arrangement and incorporated these Arrangements into the Section 125 Plan.

- 1) The Health Care Reimbursement Arrangement has been established to reimburse the eligible employees of the City for the cost of health care expenses incurred by them, their spouses and dependents. It is intended that the Arrangement meet the requirements for qualification under Code Section 105, and that benefits paid employees hereunder be excludable from their gross incomes by virtue of Code Section 105(b).
- 2) The Dependent Care Reimbursement Arrangement has been established to reimburse the eligible employees of the City for the cost of dependent care expenses incurred by them incidental to their being employed. It is intended that the Arrangement meet the requirements for qualification under Code Section 129(d)(1), and that benefits paid employees hereunder be excludable from their gross incomes by virtue of Code Section 129(a).

B. Services

Contractor, as the FSA Plans Third-Party Administrator for the City, shall:

1. Ensure that claims are managed effectively, efficiently and consistent with the scope of services.
2. Provide high quality, efficient program administration and services that will minimize work input and administrative time of the City's Health Benefits staff.
3. Establish and maintain records and books of accounts for all claims submitted. All such records and books of accounts shall be accessible to City representatives and other authorized individuals.

4. Allow the City the right to audit at no charge for Contractor's required internal support.
5. Establish effective communication lines to assist employees and the City.
6. Provide enrollment forms, claim forms, change forms, and other forms to the City as may be necessary for the management of claims under the terms of the FSA program. No forms shall be used or distributed without the prior written approval of the City.
7. In the event that a claim is denied in whole or in part, notify the claimant of such denial clearly describing:
 - a. the specific reason for the denial;
 - b. the specific reference to the FSA program provision on which the denial is based;
 - c. any additional materials or information needed for the claimant to appeal his/her claim;
 - d. an explanation of the FSA program's claims review procedure; and
 - e. the time frame during which the appeal must be filed.
8. If a payment is made to or on behalf of an ineligible person or an overpayment is made, attempt to recover such payment or overpayment by a single written request to such person. Contractor shall take such further action with regard thereto as may be directed in writing by the Human Resources Director.
9. Provide the reports indicated below:
 - a. Monthly Paid Claims Report;
 - b. Ad Hoc Reports as requested by the City;
 - c. Quarterly and YTD Comprehensive Claims Reports
 - d. Performance Guarantee Reports
10. Prepare and file any forms and reports required to be furnished to the state or federal government or any subdivision or agency thereof on behalf of the City.
11. Produce and distribute to Claimants the appropriate forms (W-2P Forms) for preparation of individual income tax returns on an annual basis.
12. Advise the City on any new or pending local, state, or federal legislation that may have an impact on the FSA program.
13. Ensure that the City's electronic data and information is confidential and the electronic storage and processing systems are protected.
14. As program provisions change, provide information electronically and printed booklets describing the program.
15. Provide administrative services to the City on behalf of Participants.

16. Timely update Participant's records.
17. Maintain accurate Participant Health and Dependent Care Reimbursement balances, and Health and Dependent Care Reimbursement contribution information.
18. Activate and deactivate Participant Debit Cards.
19. Respond to Participant inquiries and provide appropriate notices regarding Participant Health and Dependent Care Reimbursement Accounts and actions taken in relation thereto.
20. Provide administrative services to the City, including maintaining accurate FSA Health and Dependent Care Reimbursement account balance information, providing reports of Healthcare and Dependent Care Reimbursement balances related to Health and Dependent Care Reimbursement Funding Account activities and initiating draws against the Health and Dependent Care Reimbursement Funding Accounts.
21. Provide exceptional customer service to City employees enrolled in the FSA program.
22. Provide standard and ad-hoc reporting to the City, on an agreed upon schedule.

C. Administration of the Card Program

Contractor is specifically required to provide services in the management and payment of FSA claims submitted by or on behalf of covered City employees as listed below with respect to an Electronic Payment Card Program (the "Card Program"). Contractor shall:

1. Provide a card to each Participant in the City's FSA Health Care Reimbursement program.
2. Provide and operate an Electronic Payment Card Program (the "Card Program") in accordance with the IRS guidance applicable to debit card processing of Qualified Eligible Medical Expenses.
3. Provide to the City, for distribution to the Participants, information concerning proper use of the Card.
4. Provide Participants with reimbursement forms and instructions for filing request for benefits under the City's FSA Health Care Reimbursement program.
5. Provide Participants with written monthly reports summarizing the previous period's Health Care Reimbursement program Card activities.
6. Provide electronic and/or paper Health Care Reimbursement requests and expeditiously review such requests to determine amounts due and payable with respective requests.

7. Deactivate FSA (Health Care Reimbursement program) Card in a timely manner (but in no event more than two (2) business days) upon notice that the Participant is no longer employed by the City or has ceased to satisfy the eligibility requirements of the City Health Care Reimbursement program.
8. Request and require substantiation of expenses paid with the Card in accordance with IRS Card Guidance by notifying Participants electronically or in writing as to requests denied or deemed ineligible for reimbursement not meeting the City's FSA Health Care Reimbursement program requirements.
9. Provide a call center support for Participants to report lost or stolen Debit Cards, and resolve all servicing issues related to the Card, except transaction or merchant disputes.

D. FSA Program Design

Below is a brief summary of the FSA program currently offered for:

a) Health Care Flexible Spending Account:

- Minimum contribution of \$240 a year
- Maximum contribution of \$2,500 a year
- Maximum bi-weekly contribution of \$104.16
- Maximum permitted rollover of \$500 into next year
- Provide preloaded debit cards for members
- Allow members to check card balance
- FSA administrator provides a Mobile App that allows for account balance verification and submittal of receipts for claims processing
- Notifications and alerts to members through mail and mobile devices via a valid email or phone number

a) Dependent Care Flexible Spending Account:

- Maximum annual contribution: \$5,000
- Minimum annual contribution: \$99.84
- Maximum Bi-weekly contribution of \$208.33
- Minimum Bi-weekly contribution of \$4.16
- FSA administrator provides a Mobile App that allows for account balance verification and submittal of receipts for claims processing
- Notifications and alert to members through mail and mobile devices via a valid email or phone number

Participant salary reductions for the FSA are made bi-weekly from the employees' paychecks.

Services of the third-party administrator also include:

- Educate employees on the benefits of the FSA program and their respective responsibilities

- Account for deposits and disbursements from each employee's account
- Prepare monthly deposit and claims reports for the Financial Risk Management Division of the City's Department of Human Resources and for each participant
- Respond to employees inquiries
- Report forfeitures under the FSA program to reduce administrative expenses
- Perform all periodic government reporting, filing and amendments as required by law
- Perform all discrimination tests, reporting, filing and amendments as required by law
- Provide legal assistance as necessary

E. Eligible Employees

Eligible employees are all full-time active employees who are scheduled to work at least 30 hours per week as designated in the city SAP payroll system and elected officials.

F. Effective Date of Coverage for Employees

- The effective date of the voluntary Health Care Flexible Spending Account for eligible employees is May 1, 2016.
- New employees are eligible on the 1st or 16th of the month after they complete 30 days of continuous full-time active work with the City.
- Dependent Care Flexible Spending Account is effective on a calendar-year-basis.

EXHIBIT "B"

FEE SCHEDULE

EXHIBIT "C"

DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an owner or officer of
(Name) (Print/Type) (Title)

(Contractor)

(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date

Contractor Name

Signature

Title

EXHIBIT "D"

**CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, _____, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in '5.17 of Executive Order No. 1-31, that will be involved in performing

(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

Date

Typed or Printed Name

Signature

Title

EXHIBIT "E"
DRUG POLICY COMPLIANCE DECLARATION

I, _____
as an owner or officer
(Name) (Print/Type) (Title)
of _____
(Contractor) (Name of Company)
have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____, .20____

_____ A written Drug Free Workplace Policy has been implemented and employees notified.
Initials The Policy meets the criteria established by the Mayor's Amended Policy on Drug
Detection and Deterrence (Mayor's Policy).

_____ Written drug testing procedures have been implemented in conformity with the Mayor's
Initials Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31.
Employees have been notified of such procedures.

_____ Collection/testing has been conducted in compliance with federal Health and Human
Initials Services (HHS) guidelines.

_____ Appropriate safety impact positions have been designated for employee positions
Initials performing on the City of Houston contract. The number of employees in safety impact
positions during this reporting period is _____.

_____ From _____ to _____ the following test has occurred
Initials (Start date) (End date)

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

_____ Any employee who tested positive was immediately removed from the City worksite
Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in accordance with
Initials established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT “F”

HIPAA BUSINESS ASSOCIATE AGREEMENT

This **HIPAA BUSINESS ASSOCIATE AGREEMENT** (the “BAA”) is made and entered into by and between _____ (“Business Associate” or “Contractor”) and the **CITY OF HOUSTON, TEXAS**, a home rule city of the State of Texas (“Covered Entity” or the “City”) in connection with the **AGREEMENT FOR THIRD-PARTY ADMINISTRATOR (TPA) SERVICES FOR HEALTH AND DEPENDENT CARE FLEXIBLE SPENDING ACCOUNT** (the “Agreement”). This BAA supersedes and replaces any existing Business Associate Agreement between Covered Entity and Business Associate.

The purpose of this BAA is to comply with the provisions applicable to the confidentiality and security of individual health records as required under the Health Insurance Portability and Accountability Act of 1996, as codified at 45 C.F.R. Parts 160 and 164, as amended (“HIPAA”) and any current and future regulations promulgated hereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (“Federal Privacy Regulations”), the federal security standards contained in 45 C.F.R. Part 160, 162 and 164 (“Federal Security Regulations”), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 142, 160 and 162 (the “Federal Electronic Transaction Regulations”), as applicable; the Health Information Technology for Economic and Clinical Health Act (“HITECH”) contained in Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, as applicable, all as may be amended from time to time, and TEX. HEALTH & SAFETY CODE ANN. §§81.046, as amended, 181.001 *et seq.*, as amended, 241.151 *et seq.*, as amended, and 611.001 *et seq.*, as amended, all as may be amended from time to time, and all collectively referred to herein as “HIPAA Privacy and Security Requirements”, to protect the privacy and security of Protected Health Information (PHI) and Electronic Protected Health Information (EPHI) data created or received by Business Associate from or on behalf of the City.

A. Definitions.

1. “Confidential Information” is information that has been deemed or designated confidential by law (*i.e.*, constitutional, statutory, regulatory, or by judicial decision).
2. “Protected Health Information” (“PHI”) is defined in 45 C.F.R. § 160.103 and is limited to information created or received by Contractor from or on behalf of the City.
3. “Electronic Protected Health Information” (“EPHI”) shall mean individually identifiable health information that is transmitted by or maintained in electronic media.
4. “Security Incident” shall mean the attempted or successful unauthorized access,

use, disclosure, modification, or destruction of Confidential Information, including, but not limited to, PHI and EPHI, or interference with the systems operations in an information system, including, but not limited to, information systems containing EPHI. This definition includes, but is not limited to, lost or stolen transportable media devices (*e.g.*, flash drives, CDs, PDAs, cell phones, and cameras), desktop and laptop computers, photographs, and paper files containing Confidential Information, including, but not limited to, PHI and EPHI.

B. General.

1. Contractor agrees to hold all PHI and EPHI confidential except to the extent that disclosure is required by Federal or State law, including the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended.
2. Contractor agrees to be bound by and comply with all applicable Federal and State of Texas licensing authorities' laws, rules, and regulations regarding records and governmental records, including the HIPAA Privacy and Security Requirements. Compliance with this paragraph is at Contractor's own expense.
3. Contractor agrees to cooperate with state and federal agencies and to make appropriate personnel available for interviews, consultation, grand jury proceedings, pre-trial conferences, hearings, trials, and any other process, including investigations, required as a result of Contractor's services to the City. Compliance with this paragraph is at Contractor's own expense.
4. The terms used in this BAA shall have the same meaning as those terms in the HIPAA Privacy and Security Requirements.

C. Representation. Contractor represents that it is familiar with and is in compliance with the Privacy and Security Requirements, which include Federal and State of Texas requirements governing PHI and EPHI relating to the City's Health Care and Dependent Care Flexible Spending Account Program.

D. Business Associate. Contractor is a "Business Associate" of the City as that term is defined under the HIPAA Privacy and Security Requirements. Contractor specifically agrees to abide by all requirements of the HIPAA Privacy Rule and Security Rule made applicable to Business Associate under HITECH as if Business Associate were a covered entity under HIPAA.

1. *Nondisclosure of PHI and EPHI.* Contractor agrees not to use or disclose PHI and EPHI received from or on behalf of the City or created, compiled, or used by Contractor pursuant to this Agreement other than as permitted or required by this BAA, or as otherwise required by law.
2. *Limitation on Further Use or Disclosure.* Contractor agrees not to further use or disclose PHI or EPHI received from or on behalf of the City or created, compiled,

or used by Contractor pursuant to this BAA in a manner that would be prohibited by the HIPAA Privacy and Security Requirements if disclosure was made by the City, or if either Contractor or the City is otherwise prohibited from making such disclosure by any present or future State or Federal law, regulation, or rule.

3. *Safeguarding PHI.* Contractor agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this BAA or as required by State or Federal law, regulation, or rule.
4. *Safeguarding EPHI.* Contractor agrees to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of the City. These safeguards shall include the following:
 - a) Encryption of EPHI that Contractor stores and transmits;
 - b) Implementation of strong access controls, including physical locks, firewalls, and strong passwords;
 - c) Use of updated antivirus software;
 - d) Adoption of contingency planning policies and procedures, including data backup and disaster recovery plans; and
 - e) Conduct of periodic security training.
5. *Reporting Security Incidents.* Contractor agrees to report to the City any Security Incident **immediately** upon becoming aware of such. Contractor further agrees to provide the City with the following information regarding the Security Incident as soon as possible, but no more than five (5) business days after becoming aware of the Security Incident: (1) a brief description of what happened, including the dates the Security Incident occurred and was discovered; (2) a reproduction of the PHI or EPHI involved in the Security Incident; and (3) a description of whether and how the PHI or EPHI involved in the Security Incident was rendered unusable, unreadable, or indecipherable to unauthorized individuals either by encryption or otherwise destroying the PHI or EPHI prior to disposal. If Contractor determines that it is infeasible to reproduce the PHI or EPHI involved in the Security Incident, the Contractor agrees to notify the City in writing of the conditions that make reproduction infeasible and any information the Contractor has regarding the PHI or EPHI involved.

Contractor agrees to cooperate in a timely fashion with the City regarding all Security Incidents reported to the City.

The City will review all Security Incidents reported by Contractor.

Contractor will take the following steps in response, to the extent necessary or required by law, including, but not limited to, (1) notifying the individual(s) whose PHI or EPHI was involved in the Security Incident, either in writing, via telephone, through the media, or by posting a notice on the City's website, or through a combination of those methods, of the Security Incident; and (2) providing the individual(s) whose PHI or EPHI was involved in the Security Incident with credit monitoring services for a period of time to be determined by the City, at no cost to the individuals.

The City, to the extent necessary or required by law, will provide notice of the Security Incident, as required by law, to the Secretary of the United States Department of Health and Human Services ("HHS").

Contractor agrees to reimburse the City for all expenses incurred as a result of Contractor's Security Incidents, including, but not limited to, expenses related to the activities described above. Contractor agrees that the City will select the Contractors and negotiate the contracts related to said expenses.

6. *EPHI and Subcontractors.* Contractor shall require any agent to whom it provides PHI or EPHI, including a subcontractor, to agree to implement reasonable and appropriate safeguards to protect such PHI or EPHI. Further, Contractor agrees to give the City at least sixty (60) days advance notice of its intent to provide PHI or EPHI to an agent located outside of the United States.
7. *Subcontractors and Agents.* Contractor shall require any subcontractor or agent to whom Contractor provides PHI or EPHI received from or on behalf of the City or created, compiled, or used by Contractor pursuant to this BAA, to agree to the same restrictions and conditions that apply to Contractor with respect to such PHI and EPHI.
8. *Reciprocal Disclosures.* The Parties agree that the Parties may reciprocally disclose and use PHI or EPHI for initial and continuing eligibility and compliance determinations related to the provision of benefits, for auditing and legal compliance purposes, and for compliance with laws, regulations, and rules related to City's Health Care and Dependent Care Flexible Spending Account Program.

Contractor agrees:

- a) to be bound by these provisions with regard to PHI or EPHI received from the City;
- b) to take disciplinary action against any employee whose willful act violates these provisions and results in an unlawful disclosure of PHI or EPHI.

9. *Mitigation.* Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI or EPHI by Contractor, or by a subcontractor or agent of Contractor, resulting from a violation of this BAA, including violations of the HIPAA Privacy and Security Requirements stated herein. Contractor also agrees to inform the City in advance of its actual mitigation and of the details of its mitigation plan, unless doing so would cause additional harm.
10. *Notice – Access by Individual.* Contractor agrees to notify the City in writing within three (3) business days of any request by an individual for access to the individual's PHI or EPHI and, upon receipt of such request, direct the individual to contact the City to obtain access to the individual's PHI. Upon request by the City, Contractor agrees to make available PHI and EPHI to the City or, as directed by the City, to an individual in accordance with 45 C.F.R. § 164.524.
11. *Notice – Request for Amendment.* Contractor agrees to notify the City in writing within three (3) business days of any request by an individual for an amendment to the individual's PHI or EPHI and, upon receipt of such request from the individual, direct the individual to the City to request an amendment of the individual's PHI or EPHI. Contractor agrees to make available upon request PHI and EPHI for amendment and to incorporate any amendments to PHI and EPHI agreed to or directed by the City in accordance with 45 C.F.R. § 164.526.
12. *Notice – Request for Accounting.* Upon receipt of any request from an individual for an accounting of disclosures made of the individual's PHI or EPHI, Contractor agrees to notify the City in writing within three (3) business days of any such request, and upon receipt of such request from the individual, direct the individual to the City for an accounting of the disclosures of the individual's PHI or EPHI. Contractor agrees to make available upon request the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528. Pursuant to 45 C.F.R. § 164.528(a), an individual has a right to receive an accounting of certain disclosures of PHI or EPHI in the six (6) years prior to the date on which the accounting is requested.
13. *HHS Inspection.* Upon written request, Contractor agrees to make available to HHS or its designee, Contractor's internal practices, books, and records relating to the use and disclosure of PHI and EPHI received from, or created or received on behalf of, the City in a time or manner designated by HHS for purposes of HHS determining the City's compliance with the HIPAA Privacy and Security Requirements.
14. *City Inspection.* Upon written request, Contractor agrees to make available to the City and its duly authorized representatives during normal business hours Contractor's internal practices, books, records and documents relating to the use and disclosure of confidential information, including, but not limited to, PHI and EPHI received from, or created or received on behalf of, the City in a time and

manner designated by the City for the purposes of the City determining compliance with the HIPAA Privacy and Security Requirements. Contractor agrees to allow such access until the expiration of four (4) years after the services are furnished under the contract or subcontract or until the completion of any audit or audit period, whichever is later. Contractor agrees to allow similar access to books, records, and documents related to contracts between Contractor and organizations related to or subcontracted by Contractor to whom Contractor provides confidential information, including, but not limited to, PHI and EPHI received from, or created or received on behalf of, the City.

15. *PHI or EPHI Amendment.* Contractor agrees to incorporate any amendments, corrections, or additions to the PHI or EPHI received from or created, compiled, or used by the City pursuant to this BAA when notified by the City that the PHI or EPHI is inaccurate or incomplete, or that other documents are to be added as required or allowed by the HIPAA Privacy and Security Requirements.
16. *Documentation of Disclosures.* Contractor agrees to document disclosure of PHI or EPHI and information related to such disclosures as is necessary for the City to respond to a request by an individual for an accounting of disclosures of PHI or EPHI in accordance with 45 C.F.R. § 164.528, as amended.
17. *Termination Procedures.* Upon termination of this BAA for any reason, Contractor agrees to deliver all PHI or EPHI received from the City or created, compiled, or used by Contractor pursuant to this BAA within thirty (30) days from the date of termination, or, if specially requested to do so by the City in writing, to destroy all PHI or EPHI within the time frame determined by the City, which will be no less than thirty (30) days from the date of the notice of termination. This provision applies when Contractor maintains PHI or EPHI from the City in any form. If Contractor determines that transferring or destroying the PHI or EPHI is infeasible, Contractor agrees:
 - a) to notify the City of the conditions that make transfer or destruction infeasible;
 - b) to extend the protections of this BAA to such PHI or EPHI; and
 - c) to limit any further uses and disclosures of such PHI or EPHI to those purposes that make the return, or transfer to the City, or destruction infeasible.
18. *Notice-Termination.* Upon written notice to Contractor, the City may terminate any portion of the Agreement under which Contractor maintains, compiles, or has access to PHI or EPHI. Additionally, upon written notice to Contractor, the City may terminate the entire Agreement to which this BAA is attached to, if the City determines, at its sole discretion, that Contractor has repeatedly violated a HIPAA Privacy or Security Requirement.

- E. Survival of Privacy Provisions. Contractor's obligations with regard to PHI and EPHI shall survive termination of this BAA and the Agreement.
- F. Amendment Related to Privacy and Security Requirements. The Parties agree to take such action as is necessary to amend this BAA if the City, in its reasonable discretion, determines that amendment is necessary for the City to comply with the HIPAA Privacy and Security Requirements or any other law or regulation affecting the use or disclosure of PHI or EPHI. Any ambiguity in this BAA shall be resolved to permit the City to comply with the HIPAA Privacy and Security Requirements.
- G. **Indemnification.** Contractor agrees to indemnify and hold harmless the City and its officers, employees, and agents (individually and collectively "Indemnitees") against any and all losses, liabilities, judgments, penalties, awards, and costs (including costs of investigations, legal fees, and expenses) arising out of or related to:
1. a breach of this BAA relating to the HIPAA Privacy and Security Requirements by Contractor; or
 2. any negligent or wrongful acts or omissions of Contractor or its employees, directors, officers, subcontractors, or agents, relating to the HIPAA Privacy and Security Requirements, including failure to perform their obligations under the Privacy and Security Requirements.
- H. Electronic Mail Addresses. Contractor affirmatively consents to the disclosure of its e-mail addresses that are provided to the City, including any agency or department of the City. This consent is intended to comply with the requirements of the Texas Public Information Act, TEX. GOV'T CODE ANN. § 552.137 *et seq.*, as amended, and shall survive termination of this BAA. This consent shall apply to e-mail addresses provided by Contractor and agents acting on behalf of Contractor and shall apply to any e-mail address provided in any form for any reason whether related to this BAA or otherwise.
- I. Except as otherwise limited in this BAA, Contractor may use or disclose Protected Health Information it creates or receives from or on behalf of the City to provide the services to or on behalf of the City set out in the Agreement.
- J. This BAA survives the termination of the Agreement and expires when all of the PHI provided by the City to Contractor is destroyed or returned to the City.
- K. **Notices** - All notices to either party to the BAA must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out below or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

Covered Entity:

City of Houston
P.O. Box 248
Houston, Texas 77001-9931
Attention: Director
Or Designee
Department of Human Resources

Business Associate:

Attention: _____

Signatures:

The Parties have executed this BAA in multiple copies, each of which is an original.

WITNESS:

(BUSINESS ASSOCIATE)

Name

By: _____

By: _____

Name:

Name:

Title:

Title:

Tax Identification No. _____

ATTEST/SEAL:

(COVERED ENTITY)

CITY OF HOUSTON, TEXAS

Signed by:

City Secretary

Mayor

APPROVED:

COUNTERSIGNED BY:

Director,
Department of Human Resources

City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

Sr. Assistant City Attorney
L.D. File No. _____
