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

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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.

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.

"Policy" shall mean any policy issued by Contractor pursuant to this Agreement.

"Policyholder" is defined in Article III.A.

"Premium" is defined in Article IV.A.

## III. DUTIES OF CONTRACTOR

### A. Scope of Services

Supplemental Insurance Policies. For and in consideration for payment of Premiums, Contractor shall issue a Policy to each City employee, that meets the requirements herein ("Policyholder") in a form substantially similar to Exhibits B1, B2 or B3, and process and pay all claims related thereto, subject to the terms, limitations and

conditions of the Policy. The requirements that shall be met before issuance of a Policy are: (i) Contractor is informed that the City employee is eligible to participate; (ii) the City employee correctly completes and signs application(s) for Policy(ies); and (iii) the applicant meets the medical and other underwriting criteria of the application and Policy. In addition, Contractor shall perform those services as fully described in the Scope of Services attached hereto as Exhibit "A".

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

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

(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 Policy Quarter basis and a Policy Year basis, as provided in the table below if it does not at least match the Performance Standards for each such time period.

<b>Performance Service Standards Guarantees</b>	<b>Amount at Risk</b>
1. Quarterly Reports by Product, Premium, Premium Discrepancy, Claim Turnaround Time and Disability Claim Report. Include quarterly loss ratios by product which must be based on data specific to premiums paid by city employees and claims paid for city employees/dependents. Provide report within 30 calendar days immediately following the end of the Policy Quarter.	\$1,000 per quarter
2. Annual Loss Ratio by Product, Premium, Premium Discrepancy, Claim Turnaround Time and Disability Claim Report within 45 calendar days following the end of the Policy Year	\$2,000 annually
3. Process 97% of process-ready claims within seven (7) business days of receipt and 100% of process-ready claims within ten (10) business days of receipt. Provide report within 30 days after each quarter ends.	\$500 per quarter
<b>New Vendor Only</b>	
1. Implementation Services to be measured and reported one (1) month after the effective date of each Policy year beginning May 1: (a) Mail evidence of insurance coverage within 10 calendar days of Policy effective date; (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.	\$3,000 annually
2. Provide Administration Manual to the City of Houston within 30 days of contract effective date.	\$500 (one time)

Contractor shall report in writing to the Director within 30 days immediately following the end of a Policy 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 Policy 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 Policy 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 "D", 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 "E".

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 "F". 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.

#### **IV. DUTIES OF CITY**

A. Payment Terms

Subject to all terms and conditions of the Agreement, the City shall collect premiums for all Policies issued by Contractor pursuant to this Agreement (“Premium”) through payroll deductions or other means from each Policyholder and to pay such premiums to Contractor. Such premiums shall be as provided in Exhibit "C". The Premium rates specified in Exhibit “C” shall be guaranteed for the initial three year term and the two one-year renewal option years. For Policies and Premium rates during a renewal option year or years, if any, refer to Exhibit “C” which shall govern.

B. 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**

This Agreement is renewable for two additional one-year terms at the sole option of the Director, provided that the Director gives written notice of such renewal to Contractor no later than (30) thirty days before the end of the Initial Term or before the anniversary of any Renewal period.

### **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 at his or her sole discretion may terminate Contractor's performance under the Agreement at any time by giving 90 days notice in writing 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. The City shall pay the prescribed premiums due to Contractor under the Agreement to the date of termination, but not already paid for, as prescribed herein, provided such premiums do not exceed the Premiums due to be paid under this Agreement.

TERMINATION OF PERFORMANCE AND RECEIPT OF PREMIUMS AS SET OUT  
HEREIN SHALL BE CONTRACTOR'S ONLY REMEDIES IN THE EVENT OF  
TERMINATION FOR CONVENIENCE BY THE CITY. SUCH TERMINATION BY THE

CITY SHALL NOT CONSTITUTE A DEFAULT OR BREACH OF THE AGREEMENT, AND CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES WHICH MAY BE OCCASIONED BY THE CITY'S TERMINATION FOR CONVENIENCE.

## **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 employee voluntary supplemental insurance policies. 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, including the Texas State Board of Insurance.

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**

The services which will be provided by Contractor are outlined below:

- Contractor shall provide the Voluntary Supplemental Insurance Plans for City of Houston employees. The Policies are:
  - 1) Hospital Indemnity Insurance Plan,
  - 2) Enhanced Personal Accident Expense Plus (Accident/Disability Insurance Plan), and
  - 3) Personal Cancer Protector Insurance Plan.
- Contractor shall provide all forms and communication materials to enroll and maintain the Policies.
- Provide exceptional customer service to the City's members of the SI program; including a City dedicated customer service toll free phone line.
- Contractor shall ensure claims are managed effectively, efficiently and consistent with the scope of services.
- Establish and maintain records and books of account for all claims submitted. All such records and books of account shall be accessible to City representatives and other authorized individuals.
- Contractor shall pay, issue, and mail or direct deposit checks for benefits properly payable under the plans or deny payments of benefits.
- 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 SI Plan provision on which the denial is based;
  - c. any additional materials or information needed for the claimant to appeal his claim;
  - d. an explanation of the SI Plan's claims review procedure; and
  - e. the time frame during which the appeal must be filed.
- If a payment is made to or on behalf of an ineligible person or an overpayment is made, Contractor must attempt to recover such payment or overpayment by a single written request to such person. The Director may direct further action in writing to Contractor.

- Produce and distribute to claimants the appropriate forms (W2-P Forms) for preparation of annual individual income tax returns.
- 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.
- Advise the City on any new or pending local, state or federal legislation that may have an impact on the Supplemental Insurance Plans.
- Provide exceptional customer service the City's members of the supplemental insurance program, including a City dedicated customer service toll free phone line.
- Establish effective communication lines to assist employees and the City; handle all customer interfaces.
- Ensure that the City's electronic data and information is confidential and the electronic storage and processing systems are protected.
- Contractor shall provide the City the right to audit at no charge for internal claims audit support.
- As plan provisions and rates change, provide information electronically and printed booklets describing the Plan. Booklets may be required in both English and other languages.
- Contractor shall provide the following reports to the Director:
  - Quarterly Reports by Product, Premium, Premium Discrepancy, Claim Turnaround Time and Disability Claim Report. Include quarterly loss ratios by product within 30 calendar days immediately following the end of the Policy Quarter.
  - Quarterly report with number of policy holders and policies by product.
  - Annual Loss Ratio by Product, Premium, Premium Discrepancy, Claim Turnaround Time and Disability Claim Report within 45 calendar days following the end of the Policy Year.
  - Provide Performance Guarantee Reports.
  - Provide standard and ad hoc reporting to the Director (or Designee) on an agreed upon schedule.

**EXHIBIT "B1"**

**PERSONAL CANCER PROTECTOR PLAN INSURANCE**

**(See attached)**

**EXHIBIT "B2"**

**HOSPITAL INDEMNITY PLAN INSURANCE**

**(See attached)**

**EXHIBIT "B3"**

**PERSONAL ACCIDENT EXPENSE PLUS PLAN**

**(See attached)**

## **EXHIBIT "C"**

### **CONTRACTOR GUARANTEED PREMIUM RATES**

- **The premium rates for the cancer, hospital, and accident policies are guaranteed for five years.**

**EXHIBIT "D"**

**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 "E"**

**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 "F"**  
**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 G”**

### **CONTRACTOR COVERAGE FOR ELIGIBLE DEPENDENT CHILDREN**

**Dependent means:**

- A lawful spouse;
- An employee’s child who is
  - ✚ Less than 26 years old
  - ✚ 26 or more years old, unmarried, and primarily supported by the employee and incapable of self-sustaining employment by reason of mental or physical disability, which arose while the child was covered as a Dependent under this Policy, or while covered as a Dependent under a prior plan with no break in coverage. Proof of the child’s condition and dependence must be submitted to Contractor within 31 days after the date the child ceases to qualify. From time to time, but not more frequent than once a year, Contractor may require proof of the continuation of such condition and dependence.

The term child means a child born to the employee, foster child, stepchild, or a child legally adopted by an employee, or a grandchild who is considered an employee’s dependent for federal income tax purposes, and is primarily dependent on the employee. It also includes a child whose adoption is anticipated and for whom the employee is legal guardian, a child for whom the employee has been ordered to assume responsibility for health benefits by a court of law.