

PROFESSIONAL SERVICES CONTRACT

This CONTRACT is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as “**CITY**”), a Texas Municipal Corporation, acting by and through its CITY Manager or designee pursuant to Ordinance No. _____ passed and approved on September 8, 2016, and Blue Cross and Blue Shield of Texas (**VENDOR**), and Operating Division of Health Care Service Corporation (HCSC), a Mutual Legal Reserve Company (hereinafter referred to as “**VENDOR**”).

I. PURPOSE

The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** will provide administration and/or coverage of the **CITY’S** medical third party administration, disease management, Preferred Provider Organization, Flexible Spending Account, Health Savings Account, and COBRA services for its employee/retiree plan participants and their dependants.

This Agreement made as of the Effective Date specified on page one (1) of this Agreement, by and between Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company (hereinafter referred to as the “**VENDOR**”), and the **CITY** specified on page one (1) of this Agreement, (hereinafter referred to as the “**CITY**”), for the **CITY** Group Number(s) set forth on page one (1) of this Agreement, WITNESSETH AS FOLLOWS:

RECITALS

WHEREAS, the **CITY** has established and adopted the Plan; and

WHEREAS, the **CITY** on behalf of the Plan desires to retain the **VENDOR** to provide certain administrative services with respect to the Plan; and

WHEREAS, it is desirable to set forth more fully the obligations, duties, rights and liabilities of the **VENDOR** and the **CITY**, as sponsor of the Plan, with respect to the Plan;

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, the parties hereby agree as follows:

II. DEFINITIONS

- 2.1 “**ADJUDICATION**” is defined as when the (1) claim is completely processed and awaiting the next check cycle; (2) the claim is denied.
- 2.2 “**ALTERNATIVE COMPENSATION ARRANGEMENT PAYMENTS**” means additional payments **VENDOR** makes to Network Providers for services for which no formal Claim form may be submitted, including, but not limited to, capitation payments, performance based reimbursement payments, Care Coordination payments, Value-Based Programs, and other alternative funding arrangements as set forth in **VENDOR’S** arrangement with the Network Provider.

If the actual amount of such Payment is not known at the time **VENDOR** bills CITY under this Agreement, then **VENDOR** may bill CITY prospectively for expected payments to Network Providers (the "Expected Payments"). Such Expected Payments will be calculated for each specific Alternative Compensation Arrangement on a per member per month ("PMPM") basis. The calculation will be made using (i) the estimated number of members involved in a particular Arrangement (as of the end of the month preceding the calculation), and (ii) the estimated Alternative Compensation Arrangement Payments for all such members. Expected Payment may vary from member to member.

CITY will be billed for its pro rata share of the Expected Payment. Any difference (surplus or deficit) between the Expected Payments that CITY has made to **VENDOR** and actual Alternative Compensation Arrangement Payments will be factored into **VENDOR**'s calculation of future Expected Payments. **VENDOR** may recalculate the PMPM charge from time to time in a manner consistent with this Agreement. In the case of any such modification, **VENDOR** shall inform CITY of such modifications. CITY will be deemed to have approved the modifications, which will become part of this Agreement, unless the CITY gives **VENDOR** prior notice otherwise.

- 2.3 "**BLUECARD WORLDWIDE VENDOR ACCESS FEE**" means the charges to the **VENDOR** for the transaction fees through the BlueCard[®] Worldwide program which are payable to the medical assistance **VENDOR** for assisting Plan Participants traveling or living outside of the United States, Puerto Rico, and U.S. Virgin Islands to obtain medical services.
- 2.4 "**CARE COORDINATION**" means organized, information-driven patient care activities intended to facilitate the appropriate responses to Covered Person's healthcare needs across the continuum of care.
- 2.5 "**CARE COORDINATOR**" means an individual within a Provider organization who facilitates Care Coordination for patients.
- 2.6 "**CARE COORDINATION FEE**" means a fixed amount paid by a Blue Cross and/or Blue Shield Plan to Providers periodically for Care Coordination under a Value-Based Program.
- 2.7 "**CITY PLANS**" means any and/or all of the following plans:
- a. The CITY of San Antonio Police Plan;
 - b. The CITY of San Antonio Fire Plan;
 - c. The CITY of San Antonio Civilian Plan;
 - d. The CITY of San Antonio Non Medicare Eligible Pre 65 Retiree Plan;
 - e. The CITY of San Antonio Flexible Benefits Plan
- 2.8 "**ELIGIBLE DEPENDENT**" is defined under the applicable CITY Plans.

- 2.9 “**ELIGIBLE EMPLOYEE**” means a full time **CITY** employee (authorized full time equivalent) eligible to participate in one or more of the **CITY** Plans on the date his/her employment begins.
- 2.10 “**ELIGIBLE RETIREE**” means a **CITY** retiree eligible to participate in the **CITY**’s retiree health program.
- 2.11 “**EMPLOYEE**” means a person who is directly employed by the **CITY** of San Antonio and is regularly scheduled for a full shift or scheduled in like manner as other similarly situated workers in the department or division on a permanent basis. “Employee” shall also include employees on Worker’s Compensation, Disability, Police Cadets, Firefighter trainees, the Mayor and **CITY** Council members, and such other officials or provisional employees as the **CITY** Council shall determine and specify.
- 2.12 “**FISCAL YEAR**” means the **CITY** of San Antonio accounting year, October 1 through September 30.
- 2.13 “**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, as amended, and their respective implementing regulations, as issued and amended by the Secretary (all the foregoing, collectively “**HIPAA**”).
- 2.14 “**HOST BLUE**” means a local Blue Cross and/or Blue Shield licensee outside the geographic area that **VENDOR** serves.
- 2.15 “**In Patient**” means the Covered Person is a registered bed patient and treated as such in a health care facility.
- 2.16 “**NEGOTIATED ARRANGEMENT**” means an agreement negotiated between one or more Blue Cross and/or Blue Shield Plans for any national account that is not delivered through the BlueCard Program.
- 2.17 “**NETWORK**” means identified Providers, including Physicians, other professional health care Providers, Hospitals, ancillary Providers, and other health care facilities, that have entered into agreements with the **VENDOR** (and, in some instances, with other participating Blue Cross and/or Blue Shield Plans) for participation in a participating provider option and/or point of service managed care health benefits coverage program(s), if applicable to the Plan under this Agreement.
- 2.18 “**NON-PARTICIPATING HEALTHCARE PROVIDER**” means a healthcare Provider that does not have a contractual agreement with a Host Blue.
- 2.19 “**OUTPATIENT**” means a Covered Person’s receiving of treatment while not an Inpatient. Services considered Outpatient include, but are not limited to, services in an emergency room regardless of whether the Covered Person is subsequently registered as an Inpatient in a health care facility.

- 2.20 **“PARTICIPATING HEALTHCARE PROVIDER”** means a healthcare Provider that has a contractual agreement with a Host Blue.
- 2.21 **“PEPM”** means Per Employee Per Month. PEPM refers only to eligible employees/retirees.
- 2.22 **“PHYSICIAN”** means a physician duly licensed to practice medicine in all of its branches.
- 2.23 **“PLAN”** means, as applied to this Agreement, the separate self-insured group health plan as defined by Section 160.103 of the Health Insurance Portability and Accountability Act of 1996.
- 2.24 **“PLAN DOCUMENTS”** means the documents setting forth the CITY Plans and any addendum which collectively provide and define coverage for plan participants.
- 2.25 **“PLAN PARTICIPANT”** means the Mayor and CITY Council Members, an eligible employee, an eligible dependent, and/or an eligible retiree who is participating in one or more of the CITY Plans.
- 2.26 **“PLAN SPONSOR”** means the CITY of San Antonio.
- 2.27 **“PLAN YEAR”** means the CITY of San Antonio benefit coverage period, January 1 through December 31.
- 2.28 **“PROVIDER”** means any Hospital, health care facility, laboratory, person or entity duly licensed to render Covered Services to a Covered Person or any other provider of medical or dental services, products or supplies which are Covered Services.
- 2.29 **“PROVIDER INCENTIVE”** means an additional amount of compensation paid to a healthcare Provider by a Blue Cross and/or Blue Shield Plan, based on the Provider’s compliance with agreed-upon procedural and/or outcome measures for a particular population of Plan Participants.
- 2.30 **“RETIREE”** means a CITY employee who retires under the rules of the Texas Municipal Retirement System or the Fire and Police Pension Fund.

III. SCOPE OF SERVICES

- 3.1 **VENDOR** shall provide all services as set forth in CITY’S Request for Proposal and **VENDOR’S** Proposal, dated April 2016, attached hereto respectively as Exhibits “D” and “E” and incorporated herein. The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of the Request for Proposal, the **VENDOR’S**

Proposal, and the terms of this CONTRACT, and the **CITY'S** Request for Proposal shall control where it conflicts with the **VENDOR'S** Proposal.

3.2 **VENDOR** shall work with the **CITY'S** Human Resources Director or Designee and appropriate **CITY** officials to perform any and all related tasks required by the **CITY** in order to fulfill the purpose of this CONTRACT.

3.3 In addition, **VENDOR** shall provide the following services:

STANDARD CORE AND ADDITIONAL SERVICES

The following is a list of the standard administrative services, which will be provided by **VENDOR**. In addition to standard services, additional services can be provided at the City's discretion.

ACCOUNT MANAGEMENT SERVICES – INCLUDED IN CORE COSTS
Implementation of Account
<ul style="list-style-type: none">• Mutually agreeable account structure for interfacing employee data• Participate in employee education meetings as needed• Participate in on-site enrollment sessions as needed• Weekly implementation meetings involving IT; Human Resources; and Finance personnel to ensure accurate completion of account structure; banking and communication deliverables• Completion of medical benefit matrix for each plan in an accurate and timely manner• Coordination of third party VENDORs in an accurate and timely manner• ID cards for initial enrollment to be provided by January 1, following receipt of eligibility file by December 9. ID cards will be provided that include PBM VENDOR information
Account Management
<p>VENDOR will provide dedicated account management which will be responsible for communication and account management functions including:</p> <ul style="list-style-type: none">• Evaluating plan operation issues and offering solutions• Making recommendation to CITY regarding options to balance cost and benefits• Offering strategic, proactive plan management• Coordinating the implementation of any add-on business• Facilitating the pass through payment arrangement to Virgin Pulse• Facilitating the preparation of claims utilization and costing analysis as needed• Appearing at leadership and council meetings during budget preparation period with minimal notice• Conducting mid- year and annual performance review

Eligibility Processing
CITY will provide biweekly eligibility files.
VENDOR will provide real time file transfers to third parties for administration of program.
VENDOR will process updates within 5 business days from receipt of electronic information.
Written Communications and Customer Service
VENDOR to provide electronic version of Benefit Booklet for each Plan in English. Benefit Booklet will be posted to Vendor website for member review.
Ongoing ID card distribution to be provided to employee's home address 10 days following processing.
Individuals can request replacement ID cards throughout the year at no additional cost.
Updated ID cards provided to employee's home address 10 days following processing and will be generated for the following circumstances: <ul style="list-style-type: none"> • Add/Remove dependent • Change from active to retiree • Annual change to new plan
Explanation Of Benefits to be provided via paper or online at discretion of employee
Standard Monthly Reporting, and Ad hoc Reporting as needed
Annual SOC 2 financial documents will be provided to CITY
Summary of Benefit Coverage on VENDOR site available to members and provided to CITY for use on our site
VENDOR will provide standard claim forms for manual submittal

<p>VENDOR to conduct Standard Coordination of Benefits (COB) for all participants annually.</p>
<p>VENDOR will provide a designated customer service team available Monday through Friday from 8:00 a.m. to 8:00 pm, CST who will resolve customer inquiries promptly in accordance with Performance Guarantees reflected in Exhibit B.</p>
<p>VENDOR will provide a designated Group Benefits Specialist to handle escalated issues. Eligibility issues will be handled by a designated membership specialist and a unit of claims operators will be cross-trained to support the claims processing function.</p>
<p>Banking Services</p>
<p>Banking arrangement by electronic weekly funds transfer. Access to weekly claims invoices are available through Blue Access for Employers. VENDOR will notify CITY of amount due each week via emailed summary invoice and sent to Accounts Payable.</p> <p>VENDOR will send a monthly invoice for administrative fees including a detailed summary of covered employees and respective tiers.</p>
<p>Claim Services</p>
<p>Claim adjudication services including payout control, eligibility management, prospective fraud and abuse detection and control and focused Quality Review programs and systems including use of prepayment review, member interviews, enrollee fraud, and provider fraud.</p>
<p>City has claim fiduciary responsibility. City delegates to VENDOR discretionary authority to perform initial benefit determinations and payments and performing appeals in accordance with the Plan as follows:</p> <ul style="list-style-type: none"> Post service- Adverse Determination: <ul style="list-style-type: none"> 1st level appeal – VENDOR provides eligibility review 2nd level appeal – City provides review of any additional information 3rd level appeal – External Review [See Services Available at Additional Costs Below] Urgent Care Claim appeal – VENDOR provides
<p>Clinical Advisor providing support and representation of all clinical based programs. Clinical Advisor to meet with city as frequently as needed to discuss utilization patterns and trends identified by analysis of claims data and overall effectiveness of benefits.</p>

INTERNET ACCESS

Access for all Plan Participants to **VENDOR** website providing a private, secure easy to use application for members service including:

- Claim status
- Eligibility information
- Search for network physicians and other health care providers
- Find answers to frequently asked questions
- Health and well-being information
- Links to employee assistance vendor, flexible spending account and health savings account vendors

Underwriting Services

Underwriting services include:

- Overall annual year end reconciliation
- Claim projections including runoff lag reports for year-end IBNR estimates
- Projection of impact of benefit changes
- Annual projection of premium equivalent rates
- Predictive modeling

Managed Care Services

Network access, management and administrative activities including provider relations, clinical profiling, contracting and credentialing and network analysis and system development.
Medical management functions including:

- Care Coordination
- Disease Management
- Reminder programs for preventative services
- Transplant management services
- Large claim case review

HEALTH SAVINGS ACCOUNT AND FLEXIBLE SPENDING ACCOUNT

- Partnership with HSA Bank to provide HSA and FSA account services including interface of eligibility data
- A separate contract will be executed between **CITY** and HSA Bank (HSA Bank Administrative Fees are included in **VENDOR'S** Administrative Fees as provided in Exhibit A - Administrative Fees).

COBRA SERVICES

- Initial notice upon enrollment
- Notification Packets
- Billing and collection
- Member payments remitted to City
- Monthly reports of eligible members within 60 day election including date election ends
- Monthly Cobra enrolled including end of enrollment period
- Members eligible for 30-month disability enrollment including end of coverage date [See COBRA Administration Provisions Exhibit H].

MEDICARE SECONDARY PAYER INFORMATION REPORTING

- Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) (P.L.110-173) adds new mandatory reporting requirements for group health plan (“GHP”) arrangements. The parties agree that the **VENDOR** as the Responsible Reporting Entity (“RRE”) under Section 111 requirements is required to report information to the Centers for Medicare & Medicaid Services (“CMS”) about individuals enrolled in the GHP who are also covered by Medicare so that CMS and the **VENDOR** can effectively coordinate health care payments consistent with the MSP rules.
- The CITY hereby authorizes and directs the **VENDOR** to disclose to CMS periodically, information pertaining to Medicare–eligible Plan Participants under the Plan.
- The CITY agrees that the **VENDOR**’s ability to make accurate primary/secondary MSP determinations depends on the breadth and accuracy of the **VENDOR**’s files concerning Plan Participants and the number of individuals employed by the CITY. The CITY agrees to use its best efforts in responding promptly and accurately to the **VENDOR**’s requests for information.
- Further, to assure the continuing accuracy of the **VENDOR**’s files, the CITY agrees that it is the CITY’s responsibility to notify the **VENDOR** promptly as may be required for such continuing accuracy of any change in the number of individuals employed by the CITY or status of its employees that might affect the order of payment under the MSP statute, such as information regarding working–aged persons who retire and changes in the number of individuals employed by the CITY that place it in, or take it out of, the scope of the MSP statute. The CITY acknowledges and agrees that the **VENDOR** will be using the information provided by the CITY and Plan Participants to update the **VENDOR**’s files, and will also forward this information to CMS so that CMS can revise its file to reflect relevant changes in primary/secondary status.
- **Disclosure Statement:** The CITY acknowledges that the **VENDOR** has furnished it with a copy of a pamphlet entitled “Information Regarding the Medicare Secondary Payer Statute” (also referred to as the “Disclosure Statement”), prepared by the Blue Cross and Blue Shield Association and reviewed by CMS, which administers Medicare.

SERVICES AVAILABLE AT ADDITIONAL FEE:

<u>Service To Be Provided</u>	<u>Cost</u>
<ul style="list-style-type: none"> • Written Communications and Customer Service Mailing of SBC to member homes 	<p>\$1.50 per SBC for mass mailings to members of a client. Additional charges may apply if VENDOR is required to mail new SBC or notices of material modification because of a change in benefits.</p>
<ul style="list-style-type: none"> • Customized Reporting 	<p>At a mutually agreeable fee</p>
<ul style="list-style-type: none"> • Claim Services City has claim fiduciary responsibility. City delegates to VENDOR discretionary authority to perform initial benefit determinations and payments and performing appeals in accordance with the Plan. 	<p>\$700 for each external review. No charge to provider.</p>
<ul style="list-style-type: none"> • Virtual Visit MDLIVE 	<p>Mutually Agreeable Fee</p>
<ul style="list-style-type: none"> • Custom Telehealth 	<p>Mutually Agreeable Fee</p>
<ul style="list-style-type: none"> • Catapult Health 	<p>Mutually Agreeable Fee</p>
<ul style="list-style-type: none"> • COBRA Services 	<p>\$10 per notification packet mailed \$75 monthly fee for group account \$10 per month for active participants Distribution of open enrollment materials handled by group</p>
<ul style="list-style-type: none"> • Member Reward Program 	<p>Mutually Agreeable Fee</p>
<ul style="list-style-type: none"> • Benefit Value Advisor 	<p>Mutually Agreeable Fee</p>

<p style="text-align: center;">SUBROGATION SERVICES</p> <ul style="list-style-type: none"> • VENDOR will identify potential claims for subrogation • Prepare and distribute questionnaire to subscriber for accident details • Prepare and send lien letter to third party • Negotiate for 100% recovery on behalf of City; any deviation to be discussed with City • Provide standard monthly reporting to City of recovery efforts 	<p>15% of Recovered Amount</p>
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3.4 **VENDOR** acknowledges that the services listed below are identified as additional services that **CITY** may request **VENDOR** to provide. If requested, **VENDOR** shall provide said service(s) under the same terms and conditions of this Contract and without the need for further Council action.

CITY will affect such a request for contingent additional services by forwarding a written request, executed by the Director of Human Resources or her designee, to the coordinator entity at its respective address provided herein. Within said request, the Director of Human Resources shall state the scope of services **VENDOR** is to provide; the period of time within which said services are to be completed; and the consideration to be paid by **CITY** for the services provided, as agreed upon with **VENDOR**.

The following services are herein designated as contingent additional services:

Managed care services; disease management; products to support employee wellness and increase employee engagement

3.5 **VENDOR** shall coordinate with **CITY** on all system enrollment transactions and accept eligibility from the **CITY'S** electronic system in a format mutually agreed to by the parties.

IV. PERFORMANCE STANDARDS

4.1 **VENDOR** acknowledges and agrees that **VENDOR** shall provide services under this CONTRACT at a certain level with a certain degree of accuracy and timeliness. Therefore, as part of this administrative services agreement with **CITY**, **VENDOR** agrees to meet or exceed the following performance standards and administrative fee adjustments:

Performance compliance audits may be conducted at the discretion of **CITY**, but are limited to one (1) per Plan Year and to claims processed in the plan year as defined herein regardless of incurred date. If **CITY** conducts a performance audit, either party to this **CONTRACT** may conduct a second audit, at its own expense, by the same or another independent auditor using a different claim sample of at least equal size. Performance-related fee adjustments will then be based on the combined results. The definition of an error in these audits is subject to a good faith review by the parties to this **CONTRACT**. The cost of the first audit conducted by the **CITY** in any plan year will be paid by **CITY**. Should **VENDOR** fail to meet any performance expectation, **VENDOR** will pay the cost for all subsequent audits until **VENDOR** is meeting expected performance levels.

As an interim measurement, **VENDOR** will share a copy of its monthly internal audit year-to-date results on City Plans with **CITY**. If **CITY** waives its right to an independent audit in any plan year, it retains the right to audit in all subsequent years.

During the term of this Agreement and within one hundred eighty (180) days after its termination, **VENDOR** may, upon at least thirty (30) days prior written notice to the **CITY**, conduct reasonable audits of **CITY'S** membership records with respect to eligibility.

- 4.2 **CITY** shall monitor, review and evaluate **VENDOR'S** performance in accordance with the Performance Standards established in this **CONTRACT**. Should **VENDOR** fall below the established Performance Standards, **VENDOR** agrees to the administrative fee adjustments set out in the Performance Guarantee Exhibit B.

See Exhibit B Performance Guarantees

V. GENERAL ASSURANCES

- 5.1 **VENDOR** covenants and agrees to perform all services described in this **CONTRACT** in a workmanlike manner with a high degree of care to ensure accuracy and timeliness. **VENDOR** shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.
- 5.2 **VENDOR** agrees to assign a designated unit including, but not limited to, a Supervisor/Manager who shall be responsible for the task administration and work performance for this **CONTRACT**.
- 5.3 **VENDOR** agrees to employ, at its own expense, all personnel required to perform the services described in this **CONTRACT**. Personnel employed by **VENDOR** shall neither be employees or nor have any contractual relationship with **CITY**. All **VENDOR** personnel

engaged in providing services under this CONTRACT shall be fully qualified and shall be authorized or licensed to perform such work as required.

- 5.4 **CITY** retains full and final authority and responsibility for the Plan and its operation. **VENDOR** is empowered to act on behalf of the **CITY** in connection with the Plan only as expressly stated in this Agreement or as mutually agreed to in writing by the parties hereto.
- 5.5 In the event that **CITY** and **VENDOR** exchange various data and information electronically, **CITY** agrees to transfer on a Timely basis all required data to **VENDOR** via secure electronic transmission on the intranet and/or internet or otherwise, in a format mutually agreed to by the parties. Further, the **CITY** is responsible for maintaining any enrollment applications and change forms completed by Plan Participants and to allow **VENDOR** reasonable access to this information as needed for administrative purposes.
- 5.6 In the event the **CITY** directs the **VENDOR** to provide data directly to its third party consultant and/or **VENDOR** and the **VENDOR** accepts, the **CITY** acknowledges and agrees, and will cause its third party consultant and/or **VENDOR** to acknowledge and agree:
- a. The personal and confidential nature of the requested documents, records and other information (for purposes of this Section 5.6, “Confidential Information”).
 - b. Release of the Confidential Information may also reveal the **VENDOR’S** confidential, business proprietary and trade secret information (for purposes of this Section 5.6, “Proprietary Information”).
 - c. To maintain the confidentiality of the Confidential Information and any Proprietary Information (for purposes of this Section 5.6, collectively, “Information”).
 - d. To maintain the Information at a specific location under its control and take reasonable steps to safeguard the Information and to prevent unauthorized disclosure of the Information to third parties, including those of its employees not directly involved in the performance of duties under its contract with the **CITY**, to the same extent that it protects its own confidential information.
 - e. To use, and require its employees to use, at least the same degree of care to protect the Information as is used with its own proprietary and confidential information.
 - f. To not duplicate the Information furnished in written, pictorial, magnetic and/or other tangible form except as necessary to fulfill the purposes of this Agreement or as required by law.
 - g. To return or destroy the Information at the direction of the **VENDOR** or within a reasonable time after the termination of this Agreement, not to exceed 60 days thereafter.

- 5.7 **CITY** will identify in writing all third party consultants and/or **VENDORS** to whom **VENDOR** is authorized to disclose data and provide appropriate authorization and specific written direction with respect to data release or exchange with any third party consultant and/or **VENDOR**.
- 5.8 **CITY** retains the final authority and responsibility to establish and construe the terms and conditions of the Plan and to determine Plan Participants' eligibility.
- 5.9 Certain claims and/or inquiries will be referred to the **CITY** for final review and determination in the following instances:
- a. When Claims for services do not appear to qualify for payment under the Plan, claims or inquiries where there is a question of eligibility, claims where there is a question as to the amount of payment due, and claims involving litigation or the threat of litigation; and
 - b. When a Covered Person chooses to appeal adverse determinations with the **CITY** after exhaustion of all remedies offered by the **VENDOR**.
- 5.10 The parties shall use commercially reasonable efforts to cooperate with and assist each other, as applicable, in the performance of their duties under this Agreement.

VI. AUDITS

- 6.1 Medical claims audits may be conducted at the discretion of **CITY**, but are limited to one (1) on site audit per Plan Year and to claims processed in the Plan Year as defined herein regardless of incurred date. Audits are limited to a maximum of ten (10) business day's onsite per Plan Year and will be based on a representative sample of randomly selected claims or reports. **CITY** will provide **VENDOR** with reasonable, prior notice of audit. Notice will include place, scope, and other information as required in standard auditing procedures. Audits will be performed at the location where City's claims are processed. If a systemic deficiency is found during the course of the audit, **CITY** can return to conduct another onsite audit to validate correction of deficiency without any additional charge. **CITY** will provide a copy of any audit report to **VENDOR** within 30 business days. Audits of any performance guarantees must be completed in the year following the period to which the performance guarantee results apply. **CITY** reserves the right to receive full claim data for external audit purposes.
- 6.2 If **CITY** waives its right to an independent audit in any Plan Year, it retains the right to audit in all subsequent years. Audit procedures in the event of termination are further set forth in Section XXIII Termination.
- 6.3 **VENDOR** will provide annual audited financial statements and a report on the processing of transactions as required by Statement on Standards for Attestation Engagements No. 16,

Type 2 report prepared by an independent certified public accountant. Both documents will be submitted to **CITY** annually upon completion for the duration of the **CONTRACT**.

VII. CONSIDERATION & BILLING

- 7.1 In consideration of **VENDOR'S** performance hereunder, **CITY** shall pay **VENDOR** as follows:

[See Exhibit A –Administrative Fees]

- 7.2 Payments to **VENDOR** for administrative fees shall be in the amount shown by the monthly billing and other documentation submitted and shall be subject to **CITY'S** approval. All services shall be performed to **CITY'S** satisfaction, and **CITY** shall not be liable for any payment under this **CONTRACT** for services that are unsatisfactory, or that have not been approved by **CITY**. The final payment due herein will not be paid until the reports, data, and documents required under this **CONTRACT** have been received and approved by the **CITY**. No additional fee or charge will be assessed against the **CITY** for late payment of any amount due to the **VENDOR** under this **CONTRACT**.
- 7.3 **CITY** shall not be obligated or liable under this **CONTRACT** to any party, other than **VENDOR**, for payment of any monies or provision for any goods or services with the exception of HSA and FSA funding.
- 7.4 **CITY** shall not be liable to **VENDOR** for costs incurred or performances rendered by **VENDOR** prior to the commencement of this **CONTRACT** or after its termination.
- 7.5 **Claim Payments: VENDOR's payment.** Upon receipt of a medical Claim, the **VENDOR** will make a Claim Payment provided that all medical claim payments due the **VENDOR** under the terms of the Agreement are paid when due.
- 7.6 **CITY's liability.** Any reasonable determination by the **VENDOR** in adjudicating a Claim under the **CONTRACT** that a Covered Person is entitled to a Claim Payment is conclusive evidence of the liability of the **CITY** to the **VENDOR** for such Claim Payment.
- 7.7 **Covered Person's certain liability.** Under certain circumstances, if the **VENDOR** pays the healthcare Provider amounts that are the responsibility of the Covered Person under this **CONTRACT**, the **VENDOR** may collect such amounts from the Covered Person.
- 7.8 **Cessation of Claim Payments.** If the **CITY** has failed to pay medical claim amounts owed the **VENDOR**, the **VENDOR** shall be under no obligation to make any further Claim Payments until such default is cured.
- 7.9 **CITY PAYMENT: Intent.** In consideration of the **VENDOR's** obligations as set forth in the **CONTRACT** and at the end of each **CITY** Payment Period, the **CITY** shall pay to the

VENDOR or shall provide access for the **VENDOR** to obtain the CITY Payment amount due for that CITY Payment Period.

7.10 Confirmation or notification of amount due and payment due date. The CITY shall confirm with the **VENDOR** or the **VENDOR** shall notify the CITY's financial division of the CITY Payment for each CITY Payment Period and when such payment is due. Confirmation or notification shall be in accordance with the CITY Payment Method elected and the following:

- a. *If the CITY Payment Method is by check*, the **VENDOR** shall issue the CITY a settlement statement to include the **VENDOR**'s mailing address for check remittance and the date payment is due.
- b. *If the CITY Payment Method is other than check*, the CITY shall confirm on-line the amount due by accessing the **VENDOR**'s "Blue Access for CITYs" or the **VENDOR** shall advise the CITY by email, facsimile (at an email address or facsimile number to be furnished by the CITY prior to the effective date of the CONTRACT) or by such other method mutually agreed to by the parties of the amount due. Any **VENDOR** requested payment change, must be submitted in writing on **VENDOR** letterhead to the City's Human Resource Director. The CITY Payment must be made or obtained within five (5) days of confirmation by the CITY or the CITY's notification by the **VENDOR**. If any day on which a CITY Payment is due is a holiday, such payment will be made or obtained on the next business day.

7.11 Termination of CONTRACT. When this CONTRACT terminates, the funding method for Plan benefits will remain in place for twelve (12) months. After this period, that funding method will cease.

7.12 Run-Off Claims. The CITY hereby acknowledges that on the date of termination of the CONTRACT in accordance with the provisions of this Section 7, there may be a undetermined but substantial number of claims for services rendered or furnished prior to that date which have not been submitted to the **VENDOR** for reimbursement and also =an undetermined but substantial number of claims submitted for reimbursement which have not been paid by the **VENDOR** ("Run-Off Claims"). CITY shall be responsible for the reimbursement of all Run-Off Claims, whether or not such claims have been submitted, or whether or not claim payments for such claims have been made by the **VENDOR**, as of the date of termination, including, but not limited to, claim payments made in accordance with MSP laws. Further, if a Plan Participant is an Inpatient at the time his or her coverage under the Plan terminates, the Plan shall provide benefits for Covered Services which are provided by and regularly charged for by a Hospital or other facility Provider until the Plan Participant is discharged or until the end of the Plan Participant's benefit period, whichever occurs first ("Extended Benefits"). The CITY shall be liable to the VENODR for all claim payments for such Extended Benefits.

7.13 Corresponding CITY Payments. In consideration of the **VENDOR**'s continuing to make claim payments for Run-Off Claims, the CITY shall continue to make CITY

payments for all such claims paid by the **VENDOR** up to the final settlement outlined below.

7.14 Final Settlement. A final settlement shall be made within sixty (60) days after the last day of the Run-Off Period. This final settlement shall compare the CITY payments against the claim settlement totals for all Run-Off Claims paid up to the date of the final settlement. If the CITY payments exceed the claim settlement totals for all Run-Off Claims paid up to the final settlement, the **VENDOR** shall pay such difference to the CITY after applying the difference against amounts, if any, then owed to the **VENDOR** by the CITY. After the final settlement, **VENDOR** shall be released from any further liability for claim payments and claim adjustments under this CONTRACT, and as of the date the CITY shall assume full liability and responsibility for all further administration of claim payments. Further, after the final settlement, any refunds resulting from claim adjustments for overpayments, regardless of when such adjustments occurred shall be retained by **VENDOR** and CITY shall have no liability for any charges associated with any adjustments.

7.15 Uncashed checks. As of the date of termination of the CONTRACT, any outstanding checks that are or become "stale" (over 365 days old) will be escheated by the **VENDOR**, on the CITY's behalf, less any amount(s) owed by such checks' payees to the V, in accordance with the applicable state's unclaimed property law.

VIII. TERM

8.1 This **CONTRACT** is for a period of five (5) years commencing January 1, 2017, through December 31, 2021. **CITY** shall have the right to renew for one (1) additional two (2) year term upon written request by **CITY** subject to and contingent upon appropriation of funds and City Council authorization. However, **CITY** may terminate this **CONTRACT** at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of **CITY'S** budget for each fiscal year.

IX. OWNERSHIP OF PRODUCT

9.1 **VENDOR** recognizes that **CITY** shall own exclusively any and all information in whatsoever form and character produced for CITY and/or maintained by CITY in accordance with this CONTRACT and shall be used as **CITY** desires without restriction. **VENDOR** may utilize the information produced as a result of this CONTRACT for statistical purposes only as allowed by federal or state law.

X. RETENTION AND ACCESSIBILITY OF RECORDS

10.1 **VENDOR** shall maintain at its principal administrative office adequate books and records of all transactions in which **VENDOR** engages with **CITY**.

- 10.2 The books and records will be maintained for the term of this CONTRACT to which they relate and in accordance with **VENDOR'S** Enterprise Records Retention Schedule.
- 10.3 **VENDOR** shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of federal or state law.
- 10.4 Trade secrets, including the identity and address of policyholders and certificate holders, are confidential.
- 10.5 **CITY** is entitled to continuing access to these books and records.
- 10.6 **VENDOR** may, at **CITY'S** option, fulfill the requirements of this Section of this CONTRACT by delivering to **CITY**, the books and records.
- 10.7 The **CITY** consents to receive via an electronic file or access to an electronic file any document the **CITY** requests from the **VENDOR** describing the benefits under, or the administration of, the Plan.
- 10.8 **CITY** acknowledgement/responsibilities. The **CITY** further acknowledges and agrees that it is responsible for providing employees access, via the intranet, internet, or otherwise, to the most current version of any electronic file provided to the **CITY** by the **VENDOR** at the **CITY'S** request. In addition, in all instances, the electronic file of the most current document issued to the **CITY** by the **VENDOR** for use by the **CITY** is the legal document used to administer the **CITY'S** Plan and will prevail in the event of any conflict between such electronic file and any other electronic or paper file.

XI. HIPAA COMPLIANCE

- 11.1 **VENDOR** will maintain the confidentiality of all medical, dental, prescription and other patient-identifiable health information specifically relating to Plan Participants ("Protected Health Information") in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the HIPAA Security Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended from time to time.
- 11.2 **VENDOR** shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.
- 11.3 The parties acknowledge that they are "Business Associates" as defined in Title 45, Section 160.103, of the Code of Federal Regulations. **VENDOR** shall abide by the terms of the Business Associate Agreement executed by the parties, attached hereto as Exhibit C and incorporated herein by reference.

XII. PUBLICATION

12.1 In order to use any advertising relating to business exclusively developed for **CITY**, **VENDOR** must obtain approval by **CITY** at least ten (10) business days prior to such use.

XIII. NOTICE OF VENDOR'S CAPACITY

13.1 **VENDOR** shall give notice to Plan Participants of the identity of **VENDOR** and the relationship between **VENDOR** and **CITY** and the plan participant. The notice must be approved by **CITY** at least ten (10) business days prior to such distribution.

XIV. AMENDMENT

14.1 This **CONTRACT**, together with its authorizing ordinance and its exhibits, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this **CONTRACT** shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

XV. ASSIGNING INTEREST

15.1 **VENDOR** shall not assign, sell, pledge, transfer or convey any substantial interest in this **CONTRACT**, nor delegate the performance of any core duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**. Any such attempt at an assignment will be void *ab inito*, and shall confer no rights on the purported assignee. Should **VENDOR** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this **CONTRACT**, the **CITY** may, at its option, cancel this contract and all rights, titles and interest of **VENDOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this **CONTRACT**. The violation of this provision by **VENDOR** shall in no event release **VENDOR** from any obligation under the terms of this **CONTRACT**, nor shall it relieve or release **VENDOR** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation.

15.2 If approved per 15.1 above, **VENDOR'S** subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **VENDOR** arising from or in relation to this **CONTRACT**, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this **CONTRACT**. **VENDOR** shall indicate this limitation in all contracts with approved subcontractors.

15.3 **VENDOR** agrees to notify **CITY** of any changes in **VENDOR'S** ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this **CONTRACT**, any such change of ownership interest or control of its business entity may be grounds for termination of this **CONTRACT** at the sole discretion of the **CITY**.

- 15.4 In no event shall such written consent for a change of subcontractor if obtained, relieve **VENDOR** from any and all obligations hereunder or change the terms of this CONTRACT.
- 15.5 **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

XVI. INSURANCE AND BONDING

- 16.1 Prior to the commencement of any work under this CONTRACT, **VENDOR** shall furnish Certificates of Insurance. The Certificate (s) shall be in accordance with Department of Insurance and carrier rules. Prior to the commencement of any work under this CONTRACT, **VENDOR** shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Human Resources Department, Employee Benefits Division, which shall be clearly labeled "**Third Party Administration Medical**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this CONTRACT until such certificate and endorsements have been received and approved by the City's Human Resources Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 16.2 **CITY** reserves the right to review the insurance requirements of this section during the effective period of this CONTRACT and any extension or renewal hereof and to reasonably modify insurance coverages and its limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk. Any agreed to changes will be added to the CONTRACT via signed amendment using mutually acceptable language to both parties.
- 16.3 **VENDOR** shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at **VENDOR'S** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and rated A- (VII) or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation or Texas Non-Subscription 2. Employers' Liability	Statutory Limits \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile ?Liability a. Owned/leased Liability b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability – Claims Made Basis	\$5,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Commercial Crime/Employee Dishonesty (Or Fidelity Bond in same amount).	\$2,000,000 per occurrence

16.4 **VENDOR** agrees that, with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the **CITY** and its officers, employees, and elected representatives as additional insureds, by endorsement, as respects operations and activities of, or on behalf of, the named insured and performed under this CONTRACT with the **CITY**, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
- **VENDOR'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of its operations under this CONTRACT with **CITY**; and

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of **CITY**.

16.5 **VENDOR** provide advance, written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and shall give such notice not less than ten (10) calendar days for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to **CITY** at the following addresses:

**City of San Antonio
Human Resources Department
Employee Benefits Division
P.O. Box 839966
San Antonio, Texas 78283-3966**

16.6 In addition to any other remedies **CITY** may have upon **VENDOR'S** failure to provide evidence of insurance to the extent and within the time herein required, **CITY** shall have the right to order **VENDOR** to stop work hereunder until **VENDOR** demonstrates compliance with the requirements hereof.

16.7 Nothing herein contained shall be construed as limiting in any way the extent to which **VENDOR** may be held responsible for payments of damages to persons or property resulting from **VENDOR'S** or its subcontractors' performance of the work covered under this **CONTRACT**.

16.8 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this **CONTRACT** and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided.

XVII. INDEMNITY

17.1 **VENDOR** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, from and against any and all costs, third party claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **VENDOR'S** activities under this **CONTRACT**, including any acts or omissions of **VENDOR**, any agent, officer, director, representative, employee, **VENDOR** or subcontractor of **VENDOR**, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this **CONTRACT**. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY** arising out of or related to its activities under this **CONTRACT**, its officers or employees, in instances where such negligence causes personal injury, death, or

property damage. IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

17.2 The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

17.3 VENDOR shall advise the CITY in writing within 10 days of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR'S activities under this contract.

17.4 In any and all claims against any party indemnified hereunder by any employee of VENDOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for VENDOR or any subcontractor under workers' compensation or other employee benefit acts.

XVIII. INDEPENDENT CONTRACTOR

18.1 VENDOR covenants and agrees that it is an independent VENDOR and not an officer, agent, servant or employee of CITY; that VENDOR shall have exclusive right to control the details of the work performed hereunder and all person performing the same, and shall be responsible for the acts and omissions of its officers, agents, employees, VENDORS and subcontractors; that the doctrine of *respondeat superior* shall not apply as between CITY and VENDOR, its officers, agents, employees, VENDORS and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and VENDOR.

18.2 Any and all of the employees of the VENDOR, wherever located, while engaged in the performance of any work under this CONTRACT shall be considered employees of the VENDOR only, and not of the CITY, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the VENDOR.

18.3 No Third Party Beneficiaries: For purposes of this CONTRACT, including its intended operation and effect, the Parties specifically agree and contract that (1) this CONTRACT only affects matters/disputes between the Parties to this CONTRACT and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may benefit incidentally by this CONTRACT; and (2) the terms of this CONTRACT are not intended to release, either by

contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **VENDOR**.

XIX. COMPLIANCE WITH SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM

19.1 Solicitation Response and Contract Requirements and Commitment

VENDOR understands and agrees that the following provisions shall be requirements of this CONTRACT and **VENDOR** commits to comply with these requirements.

19.2 SBEDA Program

The **CITY** has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s International and Economic Development (IEDD) website page and is also available in hard copy form upon request to the **CITY**. The SBEDA Ordinance Compliance Provisions contained in this section of the agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the **CITY** pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this agreement. Unless defined in a contrary manner herein, terms used in this section of the agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual. [See SBEDA Exhibit D].

19.3 SBEDA Program Compliance – Affirmative Procurement Initiatives

The **CITY** has applied the following contract-specific Affirmative Procurement Initiative to this contract:

M/WBE Mentor Protégé Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (e), this contract is being awarded pursuant to the M/WBE Mentor Protégé Program and, if included in the CONTRACTOR’S proposal, CONTRACTOR shall comply with all requirements of the Program in accordance with CONTRACTOR’s signed Mentorship Commitment Form.

XX. NON-WAIVER

20.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required hereunder will not operate as a release to **VENDOR** from any other covenants and conditions required in this CONTRACT.

XXI. FRAUD AND ABUSE PREVENTION

- 21.1 **VENDOR** shall establish, maintain and utilize internal management procedures sufficient to protect against fraud, abuse or misappropriation of funds while in performance of obligations and duties under this CONTRACT. Any suspected fraud, abuse or misappropriation of funds shall be investigated promptly at the sole expense of **VENDOR**. Any funds that are found to be misappropriated shall be repaid to **CITY** by **VENDOR** within thirty (30) days of such recovery.
- 21.2 **VENDOR** agrees to repay **CITY** for overpayments to service providers resulting from **VENDOR'S** claims system's or processors' errors within 30 days of verification of overpayments.

XXII. CONFLICT OF INTEREST

- 22.1 **VENDOR** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the **CITY** or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 22.2 **VENDOR** warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY**. **VENDOR** further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.
- 22.3 **VENDOR** warrants that no person or selling agency has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **VENDOR** for the purpose of securing business. For breach or violation of this warranty, **CITY** shall have the right to rescind this CONTRACT without liability or, at its discretion, to deduct from the CONTRACT price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 22.4 If at any time it shall be found that the person, firm or corporation to whom a CONTRACT has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable at **CITY's** option, and **VENDOR** shall be liable to **CITY** for all loss or damage that **CITY** may suffer thereby.

XXIII. TERMINATION

- 23.1 For purposes of this CONTRACT, “termination” of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 23.2 Termination by Notice. This CONTRACT may be canceled by CITY upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days nor more than 90 calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by CITY. Any CITY funds held in any escrow account(s) shall be returned to the CITY immediately and in no event later than thirty (30) calendar days after the effective termination date.
- 23.3 Termination for Cause. Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters in default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate at 11:59:59 p.m., Central Standard Time, on the ten (10th) day after the receipt of the notice by the defaulting party.
- 23.4 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or, if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 23.5 Effect of Termination. The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from VENDOR to CITY or to such person(s) or firm(s) as the CITY may designate. Any records transfer shall be completed within 15 calendar days of the termination date. VENDOR may in certain instances, need to retain records to meet Legal or Tax Hold requirements in accordance with HCSC’s Records and Information Management Policy. In such instances, copies of records will be provided within required timeframes. Any such transfer of records or funds shall be completed at VENDOR’S sole cost and expense. All files are the property of the CITY and, at the CITY’S request, will be delivered at no cost to the CITY or its designated recipient on the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within 30 calendar days after the effective termination date.
- 23.6 Upon termination or cancellation of this CONTRACT, CITY may, at its own expense, audit Plan claim transactions upon reasonable notice to VENDOR. Within 30 calendar days or other time frame agreed to by the parties after being notified by CITY of the results of said audit, VENDOR shall pay CITY any amount shown by said audit and agreed to by VENDOR to be owed CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

- 23.7 If **CITY** conducts an audit, either party to this **CONTRACT** may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between **VENDOR** and **CITY**. The results from said third audit shall be final.
- 23.8 Upon termination of this **CONTRACT**, in whole or in part, and/or its non-renewal, in entirety or of any major operating subsidiary, entity or portion thereof, **CITY** shall have the option to:
- 23.8.1 Assume all open claims pending for the terminated or non-renewed portion of the **CONTRACT**, as of the effective date of termination or non-renewal, provided however, that **VENDOR** shall be entitled to receive its full fee for all claims processed to completion into its data files prior to the effective date of termination or non-renewal; or,
 - 23.8.2 Upon agreement of a rate of compensation by both parties, **CITY** requires **VENDOR** to continue administration, to conclusion, all incurred claims associated with that portion of the services terminated or non-renewed.
 - 23.8.3 In the event **CITY** requests **VENDOR** to provide post-termination or non-renewal claims administration, **VENDOR** will continue to process runoff claims for Plan benefits that were incurred prior to the termination date, which are received by **VENDOR** within 12 months following the termination date. The Service Fee for such activity is included in the Service Fees described in the Service and Fee Schedule(s). Runoff claims will be processed and paid in accordance with the terms of this **CONTRACT**. Claims which are pended or disputed will be handled to their conclusion by **VENDOR**. Requests for benefit payments received after the 12 month runoff period will be returned to the City or to a successor administrator at the City's expense.
- 23.9 Within 45 calendar days of the effective date of termination or cancellation, **VENDOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this **CONTRACT** through the effective date of termination, except for monies owed for processing of claims incurred prior to the termination date and submitted for processing after the termination date.

XXIV. COMPLIANCE WITH LAWS

- 24.1 **VENDOR** hereby agrees to provide services hereunder in compliance with all applicable Federal, State and local laws, regulations, policies and procedures.
- 24.2 Non-Discrimination. As a party to this contract, **VENDOR** understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXV. SUCCESSORS AND ASSIGNS

25.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

XXVI. NOTICES

26.1 Any notice required or permitted to be given under this CONTRACT shall be sufficient if given in writing and sent by certified mail, return receipt requested, postage prepaid to **CITY**, or to **VENDOR** at the addresses set forth below or to any other address of which written notice of change is given:

CITY

City of San Antonio
Human Resources Department
Employee Benefits Division
111 Soledad
San Antonio, TX 78205

VENDOR

Blue Cross and Blue Shield of Texas
1001 East Lookout Drive
Richardson, Texas 75082

XXVII. NOTICE OF ANNUAL MEETING

27.1 The CITY is hereby notified that it is a Member of Health Care Service Corporation (HCSC), a Mutual Legal Reserve Company, and is entitled to vote either in person, by its designated representative, or by proxy at all meetings of Members of said Company. The annual meeting is held at its principal office at 300 East Randolph Street, Chicago, Illinois each year on the last Tuesday in October at 12:30 P.M.

For purposes of this CONTRACT, the term “Member” means the group, trust, association or other entity with which this Agreement has been entered. It does not include Covered Employees or Plan Participants under the Plan.

XXVIII. INDUSTRY IMPROVEMENT, RESEARCH AND SAFETY

28.1 Notwithstanding any other provision of this Agreement, **VENDOR** may use and or disclose a limited data set or de-identified data for purposes of providing the services under this Agreement and for other purposes required or permitted by applicable law (the “Permitted Purposes” as defined herein). For purposes of this paragraph, “Permitted

Purposes” means the studies, analyses or other activities that are designed to promote quality health care outcomes, manage health care and administrative costs, and enhance business and plan performance, including but not limited to, utilization studies, cost analyses, benchmarking, modeling, outcomes studies, medical protocol development, normative studies, quality assurance, credentialing, network management, network development, fraud and abuse monitoring or investigation, administrative or process improvement, cost comparison studies, or reports for actuarial analyses. For purposes of this paragraph, a “limited data set” has the meaning set forth in HIPAA and “de-identified” means both member de-identification (as defined by HIPAA) and CITY de-identification (unless the work is being done in connection with the CITY’s Plan). Solely for the Permitted Purposes, the **VENDOR** may release, or authorize the release of, a limited data set or de-identified data to a third party data aggregation service or data warehouse and its customers. Such data warehouse and data aggregation service providers may charge their customers a fee for such services. Nothing in the paragraph is intended to expand or limit the terms and conditions of the Business Associate Agreement with respect to the permitted use or disclosure of PHI (other than with respect to limited data sets). The foregoing notwithstanding, the Blue Cross and Blue Shield Association and its support **VENDORs** are permitted to have internal access to the **VENDOR**-assigned CITY Group and Identification numbers.

XXIX. FORCE MAJEURE

29.1 Neither party shall be liable for any failure to Timely perform its obligations under this Agreement if prevented from doing so by a cause or causes beyond its commercially reasonable control including, but not limited to, acts of God or nature, fires, floods, storms, earthquakes, riots, strikes, wars or restraints of government

XXX. EXHIBITS

30.1 **VENDOR** understands and agrees that all exhibits referred to in this CONTRACT are intended to be and hereby are, specifically made a part of this CONTRACT. Said exhibits are as follows:

Administrative Fee	Exhibit A
VENDOR’S Performance Guarantees	Exhibit B
HIPAA Business Associate Agreement	Exhibit C
SBEDA Program	Exhibit D
CITY’S Request for Proposal	Exhibit E
VENDOR’S Proposal	Exhibit F
Interplan Arrangement	Exhibit G
COBRA Administration	Exhibit H

30.2 **VENDOR** understands and agrees that Exhibits A, B, C, D, E, F, G and H are a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by

VENDOR as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.

30.3 The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of **CITY'S** Request for Proposal, **VENDOR'S** Proposal and the terms of this CONTRACT; **CITY'S** Request for Proposal shall control where it conflicts with **VENDOR'S** Proposal.

XXXI. LEGAL AUTHORITY

31.1 The signer of this CONTRACT for **VENDOR** represents, warrants, assures and guarantees full legal authority to execute this CONTRACT on behalf of **VENDOR** and to bind **VENDOR** to all of the terms, conditions, provisions and obligations herein contained.

XXXII. VENUE AND GOVERNING LAW

32.1 Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Bexar County, Texas. This CONTRACT shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed in Bexar County, Texas.

XXXIII. GENDER

33.1 Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXXIV. CAPTIONS

34.1 The captions contained in this CONTRACT are for convenience or reference purposes only and shall in no way limit, enlarge or alter the terms and/or conditions of this CONTRACT.

XXXV. ENTIRE AGREEMENT

35.1 This CONTRACT, its exhibits and the authorizing ordinance constitute the final and entire agreement between the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties hereto.

XXXVI. SEVERABILITY

36.1 If any clause or provision of this CONTRACT is illegal, invalid or unenforceable under present or future federal, state or local laws, including, but not limited to the City Charter, City Code or Ordinances of the City of San Antonio, Texas, then, and in that event, it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties to this CONTRACT that, in lieu of each clause or provision of this CONTRACT that is illegal, invalid or unenforceable, there be added as part of this CONTRACT a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XXXVII. ACKNOWLEDGMENT

37.1 Each of the parties acknowledges that it has read this CONTRACT, understands its contents and executes this CONTRACT voluntarily.

EXECUTED this the _____ day of _____, 2016.

CITY OF SAN ANTONIO

**BLUE CROSS AND BLUE SHIELD
OF TEXAS**

Sheryl Sculley
City Manager

By: _____
Title: _____

APPROVED AS TO FORM:

Krista Cover
Assistant City Attorney