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August 9, 2018

Julie Nelson
Account Manager
Employee Benefit Management Systems, Inc.
2075 Overland Avenue
Billings, MT 59104

Re: Notice of Award

Dear Julie:

The City of Billings is pleased to announce that it has selected Employee Benefit Management Systems (EBMS) to continue as medical, prescription drug and dental claims administrator effective January 1, 2019. Services and fees are to be consistent with your written proposal and subsequent best and final offer. Attached is a summary of the accepted fees.

Services include (but are not limited to) the following:

- Medical claims administration
- Dental claims administration
- Prescription drug/ network administration
- Medical network access and administration
- FSA and HSA plan administration
- 6055/6056 ACA reporting
- Other services as deemed necessary by the City of Billings

The award will be for five years and may be extended at the discretion of the City of Billings. Fee guarantees for subsequent years are noted in your proposal and best and final offers.

On behalf of the City of Billings, we look forward to continuing the current relationship with your organization in providing continued exemplary benefits for the City's employees, retirees and their dependents.

Sincerely,

Kelly K. Dvorak
Account Executive

cc: Karla Stanton, City of Billings
Leta Lintern, City of Billings,



Liz Kampa, City of Billings
Don Heilman, Gallagher Benefit Services, Inc.
Kathy Hamm, Gallagher Benefit Services, Inc.

EMPLOYEE BENEFIT MANAGEMENT SERVICES, LLC

ADMINISTRATIVE SERVICES AGREEMENT

For

CITY OF BILLINGS

EMPLOYEE BENEFIT MANAGEMENT SERVICES, LLC

ADMINISTRATIVE SERVICES AGREEMENT

THIS Administrative Services Agreement ("Agreement") is entered into effective this 1st day of January, 2019, by and between, City of Billings, P.O. Box 1178, Billings, MT 59103, hereinafter referred to as the "Plan Sponsor," and Employee Benefit Management Services, LLC, of 2075 Overland Avenue, Billings, Montana 59102, hereinafter referred to as the "Contract Administrator."

WHEREAS, The Plan Sponsor has established an employee benefit plan, hereinafter called the "Plan", which provides for payment of certain welfare benefits to and for certain eligible individuals as defined by the Plan's master plan document, hereinafter called the "Plan Document", such individuals being hereinafter referred to as "Plan Members"; and,

WHEREAS, The Plan Sponsor desires to engage the services of the Contract Administrator to provide certain services with respect to the Plan as enumerated below;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

SEC. I **DUTIES AND RESPONSIBILITIES OF PLAN SPONSOR**

- 1.01 The Plan Sponsor is the Plan Administrator and retains ultimate discretionary authority and all final authority and responsibility for the Plan and its operation. The Plan Sponsor delegates to Contract Administrator only non-discretionary authority to assist Plan sponsor in the development, maintenance and administration of the Plan as specifically described in this Agreement or as mutually agreed to in writing. Any function not expressly delegated by Plan Sponsor to, and agreed to be assumed by Contract Administrator in writing pursuant to this Agreement shall remain the sole responsibility of Plan sponsor.
- 1.02 The Plan Sponsor retains sole authority and responsibility to develop and maintain benefit designs, related plan descriptions and trust documents that comply with all applicable state and federal laws and their implementing regulations. Plan Sponsor agrees that compliance of its Plan is the sole responsibility of Plan Sponsor and will secure review of such documents from Plan Sponsor's legal counsel, as necessary. Plan Sponsor acknowledges that certain benefit design options, if elected by the Plan Sponsor, or the payment of ineligible medical claims for a Plan Member may create taxable income to Plan Member(s) and/or to Plan Sponsor, and as the employer, retains sole responsibility to ensure the Plan Member(s) is properly notified of any tax consequences of the benefit design or payment of an ineligible claim.
- 1.03 The Plan Sponsor shall have final authority in determining issues of eligibility and coverage under the Plan and claims to be paid by the Plan with the express exception of the amount of any claim eligible for reimbursement.
- 1.04 The Plan Sponsor shall have final authority as to the investment (if any) and use of any assets to fund the Plan.
- 1.05 The Plan Sponsor shall procure stop-loss coverage at levels sufficient to ensure the viability of the Plan, and shall determine and maintain the funding level required for prompt payment of all expenses incurred by the Plan. Such expenses shall include but shall not be limited to:
 - (a) specific and/or aggregate stop-loss insurance premiums;
 - (b) other insurance premiums;
 - (c) appropriate reserves for both reported and unreported claims; and
 - (d) payment of benefits pursuant to the Plan.
- 1.06 The Plan Sponsor shall be responsible for collecting all appropriate contributions to the Plan from all Plan Members. Failure to collect any such contributions shall not relieve the Plan Sponsor from its funding obligation to the Plan.

1.07

The Plan Sponsor shall be responsible for taking the following actions to facilitate the proper performance of the Contract Administrator's responsibilities:

- (a) provide the Contract Administrator with a complete and accurate list of all individuals eligible for benefits under the Plan, and who are enrolled in the Plan, by online entry of such information or by such other method as the parties may agree from time to time prior to the Effective Date;
- (b) notify the Contract Administrator, no less than monthly, of any changes in eligibility and participation. Notice of Plan Member termination must be given within thirty (30) days of the termination. Under no circumstances shall credits for administrative fees be retroactive beyond two (2) months, or to the beginning of the Initial Term or subsequent Renewal Term, whichever is shorter;
- (c) review, approve and distribute to all eligible Plan Members (and return to Contract Administrator when necessary) all appropriate and necessary materials and documents, including but not limited to, Plan Documents, summaries of benefits, identification cards, enrollment forms, applications and notice forms as may be necessary for the operation of the Plan or to satisfy the requirements of State or Federal laws or regulations;
- (d) provide the Contract Administrator with copies of any and all revisions or changes to the Plan Document as soon as is reasonably known, but no later than sixty (60) days before the effective date of the changes, or as otherwise required under applicable law;
- (e) satisfy any and all required reporting, required responses, and disclosure requirements imposed by law and/or solicited from any and all governmental agencies;
- (f) maintain bank account(s) in the name of the Plan, in a financial institution mutually agreed upon by the Plan Sponsor and Contract Administrator, from which checks or drafts are issued to cover expenses of the Plan, hereinafter referred to as the "Plan Sponsor Account;"
- (g) provide the Contract Administrator with any additional information incidental to the Plan, as may be requested by the Contract Administrator from time to time;
- (h) review and respond to all final internal adverse benefit determinations as may be required in the Plan Document;
- (i) perform any non-discrimination testing on the Plan as required by law; and
- (j) provide adequate and timely funding and/or payment to satisfy all state and/or federal regulations, including but not limited to PPACA assessments, taxes, fees, and/or penalties, state or other federal agency fees, assessments, and taxes, upon the applicable effective date, whether known or unknown at the time of executing this Agreement. This provision shall survive the termination of this Agreement, as Plan Sponsor is solely responsible for any applicable assessments, taxes, fees and/or penalties associated with the Plan or related to the Plan Sponsor's requirements to offer coverage.

1.08

Plan Sponsor shall hold information that is proprietary to Contract Administrator confidential ("Confidential Information") and shall not use or disclose such information without the consent of Contract Administrator. Confidential Information shall include ideas, concepts, techniques, works of authorship, know-how, finances, plan designs, development plans, current or proposed products or services, processes, PPO network or provider discount arrangements, pharmacy benefit management arrangements, client lists, including prospective clients, employees, business relationships, fee schedules, provider reimbursement, and information of third parties that is subject to separate confidentiality protections, (whether transferred orally, in writing, visually, electronically or by any other means) furnished (whether before or after the date hereof) by Contract Administrator. Confidential Information shall include this Agreement except where this Agreement is required to be disclosed by the Freedom of Information Act or similar state law. Confidential Information shall not include information that: (i) is or becomes publicly available other than as a result of a disclosure by a party, (ii) is or becomes available to a party on a non-confidential basis from a source (other than a party to this Agreement) which is not prohibited from disclosing such information to another party by a legal, contractual or fiduciary obligation, (iii) is independently developed by a party to this Agreement as demonstrated by written or documented evidence or (iv) was known by a party to this Agreement prior to disclosure for this Agreement.

SEC. II

DUTIES AND RESPONSIBILITIES OF THE CONTRACT ADMINISTRATOR

2.01

The Contract Administrator agrees to perform the following administrative services for the Plan Sponsor:

- (a) assist in the preparation and printing of a Plan Document, summaries of benefits, identification cards, and other material necessary to the operation of the Plan;
- (b) process and adjudicate all claims presented for payment in accordance with the Plan Document, including but not limited to reasonable investigatory work in determining claim eligibility, and preparing and distributing benefit checks, and Explanation of Benefits to Plan Members and/or service providers, as applicable;
- (c) Contract Administrator shall review and respond to appeals made by Plan Members of adverse benefit determinations as may be required in the Plan Document; as noted in Section 1, Plan Sponsor shall retain final authority to decide appeals and shall be the “appropriate named fiduciary” for purposes of Section 503 of ERISA (as defined herein);
- (d) To the extent set forth in the Plan Document, Contract Administrator, on behalf of Plan Sponsor, will facilitate reviews required by an Independent Review Organization (IRO). The Contract Administrator will submit all documentation regarding the appeal to the IRO and work with the IRO as needed to complete its review. The Contract Administrator will pass all costs of the IRO review on to the Plan Sponsor as described on Schedule A. Plan Sponsor will be responsible for collecting any allowable reimbursements from the Plan Member;
- (e) corresponding with Plan Members and their representatives regarding possible third-party liability for expenses paid by the Plan on Plan Member’s behalf, as set forth in Schedule L, Contract Administrator shall have no responsibility or liability for the refusal of Plan Members or their representatives to reimburse the Plan for such expenses. Contract Administrator shall have no obligation to take any legal action to enforce the Plan’s subrogation rights;
- (f) respond to inquiries from the Plan Sponsor, Plan Members and service providers concerning requirements, procedures or benefits of the Plan, though such information shall not constitute a determination of benefits that will be paid under the Plan or a guarantee or certification to anyone that any amount will be paid. Benefit determinations can only be made after a complete claim is submitted and fully processed by the Contract Administrator, and are subject to all eligibility requirements, limitations, exclusions and other provisions in effect when a claim is processed;
- (g) maintain all claim files for the Plan in accordance with Section VI hereof;
- (h) in addition to utilization reports, prepare and provide monthly reports of contributions received from the Plan Sponsor and all disbursements made from the Plan. Standard reports that can be produced by the automated claims system in use by the Contract Administrator, will be available to the Plan Sponsor. Contract Administrator shall provide these reports to the authorized individuals designated by Plan Sponsor to receive and disclose the protected health information of Plan Members. Plan Sponsor shall have full responsibility to ensure its designated Plan representatives use and disclose this confidential protected information in a manner consistent with the requirements of HIPAA and other applicable laws, as amended. Unless required by law, under no conditions will the Plan Sponsor use the information provided in any manner that could jeopardize an individual’s privacy or inconsistent with its role as the Plan Sponsor and Plan Administrator;
- (i) provide the Plan Sponsor with an annual summary report of the operation of its Plan;
- (j) provide information necessary for, and assist the Plan Sponsor in, preparing reports required by any local, state or federal government pertaining to the operation of the Plan. Additional compensation shall be negotiated between the parties for any reports or information requested or required by Plan Sponsor to respond to document requests made in the course of a government investigation or audit or a court proceeding (including but not limited to a subpoena and document requests) or to an agency or court order;
- (k) assist the Plan Sponsor with the establishment of rates and provide the Plan Sponsor with information on rate structures for comparable benefit programs; and

- (l) obtain quotations, as requested by Plan Sponsor, for policies of insurance, if available, including stop-loss or excess risk coverage and/or ancillary coverages such as life and AD&D. The decision to purchase any such insurance shall be made solely by Plan Sponsor. Contract Administrator makes no representations or warranties regarding the adequacy of any particular coverage or carrier. Contract Administrator may receive commissions or other compensation in connection with Plan Sponsor's purchase of such insurance as described in the accompanying disclosure Schedule.
- (m) provide electronic files of Plan Sponsor's data, including but not limited to claims, eligibility, and accumulators, to Contract Administrator's vendor partners for claims processing and other plan administration activities in standard file formats for a standard maintenance fee. If Plan Sponsor requests that Contract Administrator provide an electronic file to Plan Sponsor's third party vendor for which Contract Administrator does not have a standard file format or that Contract Administrator provide a customized file format for its vendor partner, Contract Administrator will assess Plan Sponsor the custom EDI file format fee and the custom maintenance fee. A custom EDI file format fee will be assessed to Plan Sponsor for each request of Plan Sponsor's third party vendor to change the custom file extract.

2.02 The Plan Sponsor may contract with Contract Administrator to provide claim payment services (run-in) for those claims which were incurred prior to the Effective Date of this Agreement. A fee may be charged on a per transaction basis. A transaction is considered any and all activities that generate an Explanation of Benefit or other benefit determination.

2.03 Contract Administrator shall cooperate with the Plan Sponsor in the defense of any action arising out of matters related to Plan Sponsor's Plan, and make available to Plan Sponsor and its counsel, documentation relating to or relevant to the action as Contract Administrator may have as a result of the performance of its obligations under this Agreement. The defense of any legal action or proceeding brought to recover a claim for benefits or other matter involving the Plan shall not be the obligation of the Contract Administrator, and all fees, expenses or costs attributable to the defense shall be the sole responsibility of Plan Sponsor. In the event that Contract Administrator pays any such fees and costs, either for its own defense or to support the defense of Plan Sponsor, Plan Sponsor shall immediately reimburse Contract Administrator and the remedies of Section 3.03 shall apply.

2.04 Contract Administrator will perform the function of filing the information reporting returns (Form 1099) with the IRS under the Tax Identification Number of Contract Administrator. Contract Administrator and the Plan Sponsor agree that Plan Sponsor is solely responsible for said reporting.

2.05 Contract Administrator and Plan Sponsor agree that any and all functions performed by Contract Administrator on behalf of the Plan Sponsor do not give rise to Contract Administrator acting as a "fiduciary" of the Plan. Both parties agree that the Contract Administrator is not a fiduciary of or for the Plan; that Contract Administrator does not have discretionary authority or discretionary control with respect to the management of the Plan; that Contract Administrator does not exercise any authority or control with respect to the management or disposition of the assets of the Plan; that Contract Administrator does not render investment advice; and with respect to the foregoing, the Contract Administrator has no authority or responsibility to do so.

SEC. III FEES OF THE CONTRACT ADMINISTRATOR

3.01 The Contract Administrator shall receive consideration in accordance with Schedule A herein incorporated by reference or as otherwise specifically denoted on another Schedule.

3.02 The Administrative Fees must be received by the Contract Administrator on or before the 10th day of the month for which they are due. The Administrative Fees described in Schedule A are payable in advance and may be deducted monthly by the Contract Administrator from the Plan Sponsor Account.

3.03 If the Plan Sponsor, for any reason whatsoever, fails to make a required fee payment by the 30th day of the month in which it is due, the Contract Administrator may:

- (a) after written notice to Plan Sponsor, suspend the performance of its services to the Plan Sponsor until such time as the Plan Sponsor makes the proper remittance;
- (b) charge interest to the Plan Sponsor on all past due fees at the rate of one and one-half percent (1½%) per month or the maximum rate allowed by law, whichever is less;

- (c) cease retroactively to the end of the month for which full payment was last received, all administrative services; and/or
 - (d) commence termination of this Agreement in accordance with Section VIII.
- 3.04 In the event Contract Administrator advances any sums to a vendor or a state and/or federal agency on behalf of the Plan Sponsor, Plan Sponsor agrees to immediately reimburse Contract Administrator in full and the remedies in Section 3.03 will apply. This provision shall survive the termination of this Agreement.
- 3.05 If the number of participants enrolled in the Plan decreases by twenty-five percent (25%) or more when compared to the number of participants enrolled as of the first day of each year of the Initial Term or a subsequent Renewal Term, Contract Administrator shall have the right to prospectively adjust its administrative fee. Contract Administrator shall provide notice to the Plan Sponsor of the change in its administrative fee at least thirty (30) days prior to the effective date of such change. The written notice shall describe the change and the effective date thereof, and explain the Plan Sponsor's right to reject the change and terminate the Agreement without penalty. If such change is unacceptable to the Plan Sponsor, either party shall have the right to terminate the Agreement without penalty by giving written notice of termination to the other party before the effective date of the change. If Plan Sponsor accepts the proposed change, Contract Administrator shall provide a revised Schedule A that will then become part of this Agreement without the necessity of securing Plan Sponsor's signature on the Schedule. If Plan Sponsor fails to respond to the notice and does not terminate the Agreement during the notice period, Plan Sponsor will be deemed to have approved the proposed changes and Contractor Administrator shall provide a revised Schedule A that will then become part of this Agreement without the necessity of securing Plan Sponsor's signature on the Schedule. An adjustment to Contract Administrator's administrative fee pursuant to Section 3.05 shall take effect the first of the month following the date of notice to Plan Sponsor, unless the parties agree otherwise. The adjustment may be made regardless of any rate guarantee that may be in place for that period of time. Failure by the Plan Sponsor to pay the adjusted administrative fee is subject to remedies of Section 3.03.
- 3.06 The Contract Administrator shall not provide or be responsible for the expenses and cost of legal counsel, actuaries, certified public accountants, consulting physicians, consulting dentists, medical and other review charges for special claims investigations, independent medical review services or similar services performed for the Plan Sponsor. With the exception of independent medical reviews, the Contract Administrator shall not be authorized to engage such services or incur expense or cost therefore without the consent of the Plan Sponsor. Plan Sponsor hereby consents to reimburse Contract Administrator for any expense or cost incurred on behalf of the Plan Sponsor for said independent medical review services as set forth on Schedule A.
- 3.07 If Plan Sponsor fails to pay any undisputed fee, expense, tax, assessment, penalty, and/or any other sum due under this Agreement, Plan Sponsor shall pay all reasonable expenses incurred by Contract Administrator in collecting those sums, including reasonable attorney fees and costs.

SEC. IV CLAIMS PAYMENT

- 4.01 On a weekly basis, or as otherwise directed by the Plan Sponsor, the Contract Administrator shall provide a list of claims approved for payment under the Plan. The Plan Sponsor shall deposit sufficient funds in the Plan Sponsor Account to cover the approved claims within five (5) business days. The Contract Administrator shall issue checks from the Plan Sponsor Account to pay approved claims.
- 4.02 If the Plan Sponsor, for any reason whatsoever, fails to deposit sufficient funds in the Plan Sponsor Account within twenty (20) business days from the date requested by the Contract Administrator, or if the Contract Administrator has reasonable concerns regarding the Plan Sponsor's ability to sufficiently fund claims, the Contract Administrator may immediately, with prior notice to the Plan Sponsor, suspend or terminate the prescription drug card (if applicable), suspend all claims paying activities, notify PPO networks, the DOL, healthcare providers, participants, beneficiaries, and vendors, as applicable and/or take other necessary legal action until sufficient and timely claims funding is established.
- 4.03 Plan Sponsor acknowledges that Preferred Provider Organization (PPO) discounts may not be available for any claim "paid" outside of the terms of the PPO contract. Paid typically means processed, funded and mailed or electronically deposited in an account for the provider.

- 4.04 Plan Sponsor acknowledges that claims must be paid according to the terms of the underlying stop loss contract, if applicable, or the Plan Sponsor may not be reimbursed for claims that may otherwise qualify for reimbursement. Paid typically means processed, funded and mailed or electronically deposited in an account for the provider.
- 4.05 Contract Administrator shall not be responsible for any late filings, penalties, fines, taxes, assessments, lost PPO discounts, unrealized stop-loss reimbursements, etc., that may result from late or inadequate funding (from any source), suspension or cessation of performance described herein.
- 4.06 Contract Administrator has no financial responsibility to the Plan Sponsor, or any other party, to pay for any professional, hospital or other bills related to a Member. Plan Sponsor will resolve billing and administrative issues directly with Providers. Upon request, the Contract Administrator will facilitate communications between Provider and Plan Sponsor to resolve billing and administrative issues.

SEC. V LIMITS OF THE CONTRACT ADMINISTRATOR'S RESPONSIBILITY

- 5.01 If a claim adjudication error should be discovered, the Contract Administrator shall use diligent efforts toward the recovery of any loss therefrom. Contract Administrator shall not be required to initiate legal proceedings for any such recovery and shall have no liability for such errors, provided they are reasonable, made in good faith, and within acceptable industry standards.
- 5.02 It is understood and agreed that the Contract Administrator is, and shall remain, an independent contractor with respect to the services being performed and shall, for no purpose, be deemed an employee or fiduciary of the Plan Sponsor.
- 5.03 It is understood and agreed that the Contract Administrator is not a "Plan Sponsor", "Plan Administrator" or "Fiduciary" of or for the Plan within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA") or applicable state law. Notwithstanding anything in the Agreement to the contrary, any delegation of authority or duties pursuant to this Agreement construed by a court of law or governmental agency to make the Contract Administrator such a Plan Administrator or fiduciary shall be null and void, and such duties are hereby retained by the Plan Sponsor. Accordingly, the services to be performed by Contract Administrator shall be limited to the ministerial services set forth in this Agreement and the performance by Contract Administrator of such services shall be subject to review by the Plan Sponsor.
- 5.04 It is further understood by the Plan Sponsor that the Contract Administrator is not a custodian or an insurance company, and that the Contract Administrator shall have no responsibility, risk, liability or obligation for the funding of the Plan. The responsibility and obligation for funding the Plan shall be solely and totally the responsibility of the Plan Sponsor. Contract Administrator shall have no final discretionary authority or control over the management or disposition of Plan assets, and no authority over, or responsibility for, Plan administration. Contract Administrator is neither the Plan Sponsor or Plan Administrator, nor a provider of health care services. Contract Administrator shall have no responsibility for any insurance coverage relating to the Plan, Plan Members, or Plan Sponsor; or the nature or quality of professional health services rendered to Plan Members.
- 5.05 Contract Administrator and Plan Sponsor shall each be solely responsible for compliance with all laws, rules and regulations that are now or hereafter applicable to each of them and their own performance under this Agreement. Contract Administrator shall not be responsible for establishing or maintaining the Plan or ensuring the Plan Sponsor is in compliance with applicable State or Federal legal requirements, nor shall Contract Administrator be an entity that is responsible for payment under the Plan or for payment of any fees, assessments, penalties or taxes, regardless of whether such fees, assessments, penalties or taxes are assessed against the Plan, the Plan Sponsor, or the Contract Administrator on behalf of the Plan Sponsor. The Plan Sponsor shall, in its sole discretion, determine the source of funding for such fees, assessments, penalties, or taxes, and shall assume all liability for the appropriateness of use of Plan assets or Plan Sponsor general funds to pay such fees, assessments, penalties and taxes. The Plan Sponsor understands that Contract Administrator is not an investment advisor, law firm or actuarial firm, and does not render any legal advice to Plan Sponsor.
- 5.06 Contract Administrator shall, when requested by Plan Sponsor, assist Plan Sponsor with the application for stop-loss insurance including completion of required disclosure documents. If Contract Administrator has provided administrative services under this or a prior Agreement in the twelve (12) consecutive months prior to the application for stop-loss insurance then Contract Administrator will complete the disclosure documents based on claims it has adjudicated and information it has received through

utilization review. If the Contract Administrator has not provided administrative services during the prior twelve (12) consecutive month period, then it has no responsibility for the completeness of information submitted on the disclosure document.

- 5.07 If the Plan Sponsor elects to utilize the advance funding feature of its stop-loss policy, the Plan Sponsor shall assume all liability resulting from its use of that advanced funding feature. Contract Administrator may assess Plan Sponsor a monthly administrative fee of \$500 for each month after the first 30 days the request remains unfunded for costs to manage administrative activities related to the funding request.
- 5.08 In the event Contract Administrator does not procure stop-loss insurance for Plan Sponsor or assist Plan Sponsor in such procurement, Plan Sponsor agrees that Contract Administrator shall have no liability for the selection and procurement of stoploss insurance for the Plan Sponsor.
- 5.9 Contract Administrator, on behalf of the Plan Sponsor, has agreed to perform the required duties and act as the Responsible Reporting Entity (RRE) with regard to and as defined by the Medicare Secondary Payer Mandatory Reporting Provisions in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007. In the event the Contract Administrator is unable to report timely, accurate information, as required by law, due to the Plan Sponsor's failure to provide timely and accurate information, the Plan Sponsor agrees that Contract Administrator shall have no liability for any and all resulting penalties.

SEC. VI **RECORDS**

- 6.01 The Contract Administrator shall maintain for seven (7) years following receipt or until they are provided to Plan Sponsor as provided in Section 8.04 below, in either electronic or paper form, all records and files in conjunction with the administrative services to be performed hereunder. The term "records and files" shall include, but shall not be limited to, the claim files, unissued and canceled checks, bank statements, copies of stop-loss applications and contracts, and copies of the account ledger sheets of the applicable bank accounts.
- 6.02 During normal business hours, individual claim files shall be available for inspection and copying by the Plan Sponsor and at the Plan Sponsor's expense, if appropriate releases and authorizations from all applicable claimants are executed and presented to the Contract Administrator or an appropriate Business Associate Agreement is in place.
- 6.03 The Contract Administrator shall, within thirty (30) days following written notice from the Plan Sponsor, allow the Plan Sponsor, or an authorized agent, to inspect or audit relevant records and files maintained by the Contract Administrator, at the administrative office of the Contract Administrator, during normal business hours. The Plan Sponsor shall be liable for any and all fees charged by the auditor. Any such agent or auditor that has access to the records and files maintained by the Contract Administrator shall, prior to beginning such inspection or audit, sign a written Business Associate Agreement and an agreement regarding the use of proprietary and confidential information and the right of the Contract Administrator to review and respond to the agent's or auditor's final report. Plan Sponsor agrees it will not contract with any entity to perform what can be categorized as a "contingency audit" (in which an auditing firm will retain a dollar percentage fee from claims they believe have been paid in error) or "database audit" (in which claims are screened against a database) of records and files maintained by Contract Administrator.
- 6.04 The parties agree to use and disclose the protected health information of the Plan Members in a manner consistent with all applicable state and federal laws, including but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, and the Security Standards and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 and shall execute a Business Associate Agreement.

SEC. VII **TERM OF AGREEMENT**

- 7.01 This Agreement shall commence on the Effective Date and shall continue for one (1) year ("Initial Term"), and shall remain in effect until terminated pursuant to Section VIII of this Agreement. Plan Sponsor may elect to renew the Agreement for successive one (1) year Renewal Term(s) (each a "Renewal Term" and collectively, "Renewal Terms") with ninety (90) days' notice to Contract Administrator prior to the expiration of the Initial Term or the then current Renewal Term.

SEC. VIII **TERMINATION**

- 8.01 This Agreement may be terminated:
- (a) by either party by giving written notice of non-renewal to the other party at least ninety (90) days prior to the end of the Initial Term or current Renewal Term;
 - (b) immediately by the non-breaching party in the event the breaching party fails to correct a material breach to the reasonable satisfaction of the non-breaching party within thirty (30) days after the breaching party receives written notification of breach from the non-breaching party;
 - (c) simultaneously upon the insolvency, filing of a petition for bankruptcy, if such petition is not dismissed within 45 days of being filed, or appointment of a receiver, conservator or trustee for all or substantially all of a party's assets;
 - (d) upon written agreement of the parties; or
 - (e) upon the termination of the Plan.
- 8.02 If the Plan Sponsor terminates the Agreement without providing notice of non-renewal in accordance with Section 8.01(a), it shall compensate Contract Administrator for its reasonable start-up costs associated with this Agreement, which Plan Sponsor agrees shall be equal to the number of months remaining in the current term times the Administrative Fees listed on Schedule A.
- 8.03 Application of this Agreement to any state or jurisdiction may be prospectively discontinued by either party as of the date such party determines that it will be penalized, by such state or jurisdiction, for performance of its responsibilities under this Agreement.
- 8.04 Upon termination by either party, and for an additional fee, the Contract Administrator shall, within sixty (60) days, deliver to the Plan Sponsor a paid claims analysis standard report, abbreviated case management summaries (if applicable), a current eligibility listing as of the date of termination as well as a complete and final accounting of the financial status of the Plan if applicable. The Contract Administrator shall retain, for seven (7) years after termination of this Agreement, all records and files, in either paper or electronic form, in accordance with standards of insurance record keeping. After that date, Contract Administrator shall return or destroy the confidential information or other records of the Plan in its possession. Contract Administrator shall retain only those records necessary for its own administrative operations or to respond to an inquiry made by a court, or state or federal agency. If return or destruction of the records is infeasible, Contract Administrator shall notify Plan Sponsor and extend the protections required by law to such information. If the Plan Sponsor desires copies of all records and files, Plan Sponsor shall allow Contract Administrator reasonable time in which to duplicate this material and will reimburse Contract Administrator for all costs incurred in its retrieval and duplication.
- 8.05 Upon termination of this Agreement, and for an additional fee, the Plan Sponsor and Contract Administrator may enter into a subsequent agreement whereby Contract Administrator will provide run-out claim payment services for claims received after the termination of this Agreement, but incurred prior to termination of this Agreement. The Contract Administrator may require payment in advance, and services will be provided only to the extent that Plan Sponsor provides sufficient and timely funding of claims payments.
- 8.06 Within four (4) months following termination, when requested by the Plan Sponsor, Contract Administrator shall deliver to the Plan Sponsor, data related to assist the Plan Sponsor's completion of Form 5500.
- 8.07 After termination of this Agreement and upon receipt of any funds received by the Contract Administrator on behalf of the Plan Sponsor, the Contract Administrator may keep all or a portion of said funds to the extent that any amounts are due to the Contract Administrator for the services discussed herein.
- 8.08 Upon termination of this Agreement all duties and responsibilities of the Contract Administrator shall cease unless specifically addressed within this Agreement or as set forth in a separate run-out Agreement.

SEC. IX **MISCELLANEOUS**

- 9.01 This Agreement shall be governed by the laws of the State of Montana or, where applicable, Federal law.
- 9.02 The Contract Administrator shall indemnify and hold harmless the Plan Sponsor against any expense, loss, lawsuit, settlement costs, penalty, damage, liability, claim or judgment, including reasonable attorneys' fees, resulting from the negligent acts or omissions or willful misconduct of the Contract Administrator. Unless prohibited by law or resolution, the Plan Sponsor agrees to indemnify and hold harmless the Contract Administrator against any expense, loss, lawsuit, settlement costs, penalty, damage, liability, claim or judgment, including reasonable attorneys' fees, arising out of, or resulting from the Contract Administrator's performance of its services hereunder where the Contract Administrator has adhered to the framework of policies, interpretations, rules, practices and procedures made or established by the Plan Sponsor, or has otherwise performed its services without negligence or willful misconduct and, in accordance with industry practices, or is being considered an entity responsible for payment under the Plan, as referenced in Federal Medicare Secondary Payer laws and regulations. The provisions of this section shall apply to arbitration and all forms of alternative dispute resolution as well as litigation. These indemnifications shall survive the termination of this Agreement.
- 9.03 Contract Administrator shall not be responsible or obligated for the investment of any assets or funds of the Plan.
- 9.04 Payments to the Plan, and other Plan obligations, may pass through Contract Administrator's non-interest bearing disbursement account as a matter of convenience and for efficiency. Contract Administrator will incorporate sound business practices and be responsible for reasonable internal audits. Banking charges incurred in the ordinary course of business will be the responsibility of the Contract Administrator.
- 9.05 This Agreement, together with the Schedule(s) and any Amendments, constitutes the entire Agreement between Contract Administrator and Plan Sponsor with respect to the subject matter hereof, and supersedes all prior proposals, discussions, negotiations, and writings between the parties relating to such subject matter. This Agreement may only be modified in writing and executed by authorized representatives of both Contract Administrator and Plan Sponsor.
- 9.06 If any provision of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in effect and the illegal or unenforceable provision shall be modified so as to conform to the original intent of this Agreement to the greatest extent legally permissible.
- 9.07 The obligations of either Contract Administrator or Plan Sponsor under this Agreement, shall be suspended during the continuance of any force majeure applicable to the party. The term "force majeure" shall mean any cause not reasonably within the control of the party claiming suspension, including, without limitation, an act of God, industrial disturbance, war, riot, weather-related disasters, earthquake, governmental action, and unavailability or break down of equipment. The party claiming suspension under this provision shall take reasonable steps to resume performance as soon as possible without incurring unreasonably excessive costs. If a force majeure suspension affecting one of the parties continues for more than thirty (30) days, the other party may elect to immediately terminate this Agreement by written notice on any business day thereafter.
- 9.08 Neither party may assign its rights or duties under this Agreement without the prior written consent of the other, except that either party may assign this Agreement to a subsidiary or affiliate of that party and may subcontract certain duties to non-affiliated third parties, provided that such assignments and subcontracts shall not relieve such party of any obligations or liability under this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns.
- 9.09 Any failure by a party to enforce or require performance by the other party of any of the terms or conditions of this Agreement shall not constitute a waiver or a breach of any such term or condition thereafter occurring.

SEC. X **PROVISIONS REQUIRED BY STATE STATUTES**

- 10.01 Montana Code Annotated 33-17-602 require that the following provisions be included in this agreement. These provisions shall be disregarded and inapplicable unless they relate to functions performed by the Contract Administrator for this particular Plan.

(a) The payment to the Contract Administrator of any premiums or charges for insurance by or on behalf of the insured shall be deemed to have been received by the Plan Sponsor, and the payment of return premiums or claims by the Plan Sponsor to the Contract Administrator shall not be deemed payment to the insured, certificate holder to claimant until such payments are received by the insured, certificate holder or claimant. Nothing herein shall limit any right of the Plan Sponsor against the Contract Administrator resulting from its failure to make payments to the Plan Sponsor, insureds or claimants.

(b) The Contract Administrator shall maintain at its principal administrative office for the duration of this agreement and five (5) years thereafter adequate books and records of all transactions between the Contract Administrator, Plan Sponsor and insured persons. Such books and records shall be maintained in accordance with prudent standards of insurance record keeping.

(c) The Contract Administrator may use only such advertising pertaining to the Plan Sponsor as has been approved in writing by the Plan Sponsor in advance of its use.

(d) The Contract Administrator shall apply underwriting standards established in the "Underwriting Guide for Late Applicants to Self-Funded Health Care Plans" and other source books.

(e) All insurance charges or premiums collected by a Contract Administrator on behalf of or for the Plan Sponsor, and return premiums received from such Plan Sponsor, shall be held by the Contract Administrator in a fiduciary capacity. Such funds shall be immediately remitted to the person or persons entitled thereto, or shall be deposited promptly in a fiduciary bank account established and maintained by the Contract Administrator. The Contract Administrator shall cause the bank in which any fiduciary accounts are maintained to keep records clearly recording the deposits in and withdrawals from such accounts on behalf of or for each Plan Sponsor. The Contract Administrator shall promptly obtain and keep copies of all such records and, upon request of the Plan Sponsor, furnish the Plan Sponsor with copies of such records pertaining to deposits and withdrawals on behalf of or for the Plan Sponsor. The Contract Administrator shall not be authorized by the Plan Sponsor to pay any claim by withdrawals from such fiduciary account. Withdrawals from such account shall be made for:

- (1) remittance to the Plan entitled thereto;
- (2) deposit in an account maintained in the name of such Plan Sponsor;
- (3) transfer to and deposit in a claims paying account, with claims to be paid as provided in Section f;
- (4) payment to a group policyholder for remittance to the Plan Sponsor entitled thereto;
- (5) payment to the Contract Administrator of its commission, fees or charges; or
- (6) remittance of return premiums to the person or persons entitled thereto.

(f) All claims paid by the Contract Administrator from funds collected on behalf of the Plan Sponsor shall be paid only on drafts of and as authorized by the Plan Sponsor.

(g) With respect to any policies where a Contract Administrator pays or settles claims, the compensation to the Contract Administrator with regard to such policies shall in no way be contingent on claim experience.

(h) Contract Administrator shall only act in the capacity in which licensed.

(i) The Contract Administrator shall provide a written notice approved by the Plan Sponsor, to insured individuals, advising them of the identity of and relationship among the Contract Administrator, the policyholder and the Plan Sponsor. Where the Contract Administrator collects funds, the Contract Administrator shall identify and state separately in writing to the person paying to the Contract Administrator any charge or premium for coverage the amount of any such charge or premium specified by the insurer for such insurance coverage..

SEC. XI **DISPUTE RESOLUTION**

11.01 Plan Sponsor and Contract Administrator will meet and confer in an attempt to resolve any dispute arising out of or relating to this Agreement. A dispute not resolved within 60 days of this meeting will be submitted to mediation, which will be held at a location to be determined by the mutual agreement of the parties in accordance with the American Arbitration Association (“AAA”) Rules of Procedure for Mediation. A single mediator, mutually selected by the parties or AAA and having at least 10 years’ legal experience in healthcare, including but not limited to self-funding and ERISA, will mediate the dispute. If the dispute is not resolved through mediation, the parties will be free to pursue all legal and equitable remedies otherwise available, provided, however that any action taken or remedy sought must be initiated within one year of the parties’ first meeting to resolve the dispute.

SEC. XII **SCHEDULES TO THE AGREEMENT**

12.01 The Schedules attached hereto, become part of the body of this Agreement, and are herein incorporated by reference when selected by the Plan Sponsor. Schedules or Amendments subsequently executed by both parties and attached hereto, shall become part of the body of this Agreement and incorporated herein.

IN WITNESS THEREOF the Parties hereto sign their names as duly authorized officers and have executed this Agreement.

PLAN SPONSOR:

CONTRACT ADMINISTRATOR:

City of Billings

Employee Benefit Management Services, LLC

By: _____

By: _____

Its: _____

Its: President