



Benefit Express Services, LLC Technology and Services Agreement
C-20-180-08-25

This Technology and Services Agreement entered into between Benefit Express Services, LLC, an Illinois corporation with its principal offices located at 1700 E. Golf Road, Suite 1000, Schaumburg, IL 60173 (hereafter "BE") and Employer, whose name and principal business address are set forth below, collectively "the Parties", determines the rights and obligations of BE and Employer with respect to the subject matter of this Agreement. All capitalized terms are defined in section 3.0 below or specifically stated otherwise.

Contract Date:	The first day of September, 2020
Employer Name:	Hidalgo County
Physical Address:	2802 S. Business Hwy. 281
Postal / Mailing	2812 S. Business Hwy. 281
City, State, Postal Code:	Edinburg, Texas 78539

FILED
AT 2:45 O'CLOCK P.M.
SEP 22 2020
ARTHUR G. JARVIS, COUNTY CLERK
HIDALGO COUNTY, TEXAS
BY [Signature] DEPUTY

1.0 Agreement and Term

- 1.1 During the Term and in accordance with this Agreement: (i) BE grants Employer a nonexclusive, nontransferable, revocable, limited right to use the software for the sole purpose of agency management and/or the administration of employee benefits for the employees of Employer, and (ii) BE shall render the Software, as well as provide Training and Maintenance & Support for such software.
- 1.2 Employer has the option to purchase Fulfillment, and other Professional and Shared Services.
- 1.3 The Initial Period of this Agreement shall commence on the first day of the first month that benefitexpress invoices Employer for the Professional Services set forth in the SOW ("Effective Date") and, unless sooner terminated under Section 8.0 herein, shall continue for four (4) years ("Initial Period"). Thereafter, this Agreement shall automatically renew for one (1) additional one (1) year under the same terms and conditions. ("Renewal Period") Either party may terminate this agreement with cause under Section 8 herein upon (90) day written notice of termination. Either party may termination this agreement without cause during any period of this contract upon two hundred and ten (210) day written notice of termination.

2.0 Commencement of Service

- 2.1 Commencing on the Effective Date, BE shall provide Software, Training, Maintenance and Support, and Fulfillment services according to the Service Schedules, to be agreed upon between the Parties during implementation.

3.0 Definitions

- 3.1 "Administrator Account" means any user profile with access to more than one Employee Record.
- 3.2 "Agreement" means this Technology and Services Agreement and any exhibits, attachments, addendums, schedules, Statement of Work ("SOW"), attached hereto, or otherwise incorporated herein by reference.
- 3.3 "Project Authorization Form" means the BE standard form that invoices the Professional Shared Services to be provided by BE to Employer and requires an Employer signature to authorize the work to be performed. The Project Authorization Form may also reference a SOW document when the Employer has requested Professional or Shared Services. Each Project Authorization Form will be governed by the terms of this Agreement and, if there is a conflict between a Project Authorization Form and this Agreement, the terms of this Agreement shall prevail.
- 3.4 "Employer" means the business entity identified above, which entity's employees have authorized the Employer to access and enter employee information into the Software.
- 3.5 "Effective Date" means the date entered in the outlined box above.
- 3.6 "Enhancements" means modifications, additions, or substitutions, other than Maintenance Modifications, made by BE

- to the Software at its sole discretion that accomplish incidental, performance, structural or functional improvements to the Software, to the extent that BE elects to develop such Enhancements. Provided, however, and notwithstanding the foregoing, new application Modules which BE markets separately from the Software shall not be included in the definition of Enhancements.
- 3.7 "Employee Record" means the collection of related items of information about an individual, treated as a unit, and stored in the Software database.
- 3.8 "Fulfillment" means BE's process of developing, testing, extracting, delivering, supporting and monitoring data from the Software in an electronic and secure format, including but not limited to portable document format (PDF), Microsoft Excel (XLS), delimited or fixed length text (TXT) or Extensible Markup Language (XML) formatted files.
- 3.9 "Intellectual Property Rights" means all copyrights, confidentiality rights, trade secret rights, patent rights and other intellectual property rights which shall include, but not be limited to BE's ownership of the Software and the BE trademark and any other trademarks, sales marks, service marks, trade names, marketing materials, distinguishing images or computer graphics, words, combination of words, audio recordings, computerized icons, Internet domain names or sub-names, or other related items used by BE in promotion or providing the Software Services or any services relating thereto at any time prior to, during, or subsequent to the termination of this Agreement.
- 3.10 "Maintenance" means services provided by BE which shall include, but not limited to: (i) providing and installing on BE equipment any Enhancements to the Software, and/or (ii) providing and installing on BE equipment any Maintenance Modifications to the Software.
- 3.11 "Maintenance Modifications" means modifications, updates or revisions made by BE at its sole discretion to the Object Code of the Software or to the User Manual relating thereto that correct errors or support a new release of the operating system.
- 3.12 "Module" means a unit of Software that adds additional functionality to the base Software.
- 3.13 "Object Code" means computer code in machine-readable, executable form, generated by compilation of course code and contained in a medium that permits it to be loaded into and operated on computers, including any runtime modules or programming object libraries, text or graphic files or other data structures or code components necessary for the operational use of the Software.
- 3.14 "Professional Services" means the services that are specified and priced in the attached SOW and invoiced in the Project Authorization Form to be provided by BE. The Professional Services may include, without limitation, the following types of

- 12.5 Legal Fees and Costs. The prevailing Party shall be entitled to collect from the other Party the prevailing Party's reasonable legal fees and costs in connection with the enforcement of this Agreement.
- 12.6 Independent Contractor. BE is providing the Services under this Agreement as an independent contractor, and its personnel shall not be considered employees or agents of Employer.
- 12.7 Severance and Interpretation. If any provision of this Agreement is found to be unenforceable, such provision shall be deemed to be deleted or narrowly construed to such extent as is necessary to make it enforceable and this Agreement shall otherwise remain in full force and effect. If any ambiguity or question of intent arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of authorship of any of the provisions of this Agreement.
- 12.8 Time Limitations. Except for actions for non-payment or for breach of BE's or its third-parties Intellectual Property Rights, no action arising out of or relating to this Agreement may be brought later than two (2) years after the cause of action became known to the injured Party.
- 12.9 Notices. All notices required or permitted under this Agreement and all requests for approvals, consents, and waivers must be delivered by a method providing for proof of deliver. A confirmed facsimile transmission shall be deemed to provide proof of delivery. Any notice or request will be deemed to have been given on the date of delivery. Notices and requests must be delivered to the Parties at the addresses on the first page of this Agreement until a different address has been designated by notice to the other Party.
- 12.10 Non-Solicitation of Employees. Neither Party shall directly solicit the services or employment of any employee of the other Party during the Term. The soliciting Party, who violates this section, shall pay to the other Party any amount equal to one (1) year's salary for any solicited employee of the other Party, as liquidated damages and not as a penalty. The amount of annual salary shall be the annual salary in effect at the date the employee was solicited. For purposes of this section, the term "employee" means current or former employees of the other Party who were employed by the other Party within three (3) months before solicitation occurred.
- 12.11 Public Reference and Press Releases. Employer consents to the verbal public use of its name as a client of BE. Employer hereby grants BE permission to distribute press releases upon contract signature. Such publicity may appear in BE publications and/or on BE's website. Employer will provide BE with a company logo only for use in such published materials. Any published materials will be subject to Employer's consent to both content and timing, such consent not to be unreasonably withheld or delayed; provided, however, that Employer grants BE the right to include Employer's name in BE's published client list without the need for Employer's consent.
- 12.12 Employer must send one or more persons to attend Software training at the offices of BE within the first 90 days of the contracted term.
- 12.13 Entire Agreement. This Agreement and the Exhibits listed below and referred to herein, together with any addenda signed by the Parties (collectively, the "Agreement"), constitute the entire agreement between BE and Employer with respect to the License, Services, Software and other subject matter of this Agreement, and may only be modified by a written amendment or addendum signed by both BE and Employer. No employee, agent or other representative of either BE or Employer has authority to bind the other with regard to any statement, representation, warranty, or other expression unless it is specifically included within the express terms of this Agreement or a written addendum signed by both BE and Employer. All purchase order, prior agreements, representations, statements, proposals, negotiations,

- understandings, and undertakings with respect to the subject matter of this Agreement are superseded by this Agreement.
- 12.14 Commitment of Current Revenues Only. In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of Employer under this Agreement, Employer may terminate this Agreement upon ninety (90) days written notice to BE. Employer agrees, however, to use reasonable efforts to secure funds necessary for continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Employer. Agreements for the acquisition, including lease of real or personal property under Tex. Loc. Govt. Code § 271.903.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers or representatives as of the day and year set forth above.

Benefit Express Services, LLC:

Kelly McMillen
(Signed)

Kelly McMillen
(Printed)

Chief Counsel
(Title)

9/24/2020
(Date)

COUNTY OF HIDALGO:

Richard F. Cortez
Richard F. Cortez, County Judge, DATE: 08 / /2020

ATTEST: Arturo Guadalupe Jr.
Arturo Guadalupe Jr., County Clerk

Approved By Commissioners Court on: _____

APPROVED AS TO FORM:

Office of the Criminal District Attorney
Ricardo Rodriguez Jr.

David R. Cantu
David R. Cantu, Assistant District Attorney

APPROVED BY
COMMISSIONERS' COURT
ON: 9/25/20