



**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 unless 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
ARTURO GUAJARDO 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

services: data collection, consulting, design, coding, testing, installation, configuration, sales assistance and training.

- 3.15 "Project Authorization" means the BE standard document that sets forth the additionally requested Professional Services and agreed upon pricing. Billing for the Professional Services set forth in the Project Authorization shall commence upon the sooner of 1) the completion of the implementation of the services or 2) ninety (90) days from the Project Authorization execution date.
- 3.16 "Shared Services" means the services that are specified and priced in the attached SOW and invoiced in a Project Authorization Form to be provided by BE. The Shared Services may include, without limitation, the following types of services: FSA, COBRA, HSA, ACA, Premium Billing, and Dependent Audit.
- 3.17 "Services" shall mean the Software, Training, Billing, Maintenance and Support, Employer setup, Professional or Shared provided by BE to Employer.
- 3.18 "Service Schedules" means the timetable for implementation of the services provided by BE to Employer.
- 3.19 "Software" means the **benefitsCONNECT®** and/or **My Benefit Express** application program installed in Object Code format, any updates, revisions, new versions, supplements, all permitted copies of the foregoing supplied by BE to Employer, related documentation, and media, whether in machine readable or printed form; for the purpose of Employer's enrollment and administration of employee benefits and/or agency management.
- 3.20 "Statement of Work" means the BE standard document that sets forth a description and agreed upon pricing of the Professional and Shared Services to be provided by BE to Employer. Such SOW shall be attached hereto as Exhibit D.
- 3.21 "Support" means the services provided by BE which include providing Employer telephone and e-mail support during BE's normal business hours for the purpose of enabling Employer to obtain information or resolve questions pertaining to the use of the Software.
- 3.22 "Term" means the Initial Period and any successive Renewal Periods.
- 3.23 "Training" means the phone or classroom training sessions made available to Employer by BE, which are designed to educate and train on the step-by-step processes of configuring and administering.
- 3.24 "User Manual" means the user documentation for the Software provided by BE to Employer in printed or in electronic format and which may be amended from time to time by BE.
- 3.25 The singular and plural shall each include the other, and this Agreement shall be read accordingly when required by the facts.

4.0 Obligations

- 4.1 All of the obligations of BE or its designee to provide Services under this Agreement are conditioned upon Employer's provision and maintenance, at Employer's sole expense, of Employer's hardware, third-party software products, operating systems, database systems and communications equipment required to connect to, access and use the Software.
- 4.2 Employer shall not copy, transfer, modify, translate, reverse engineer, decompile or disassemble the Software and shall take all measures necessary to prevent other within its control from doing or attempting the same.
- 4.3 Employer shall not remove, attempt to remove, modify or obscure any copyright, trademark, patent or other proprietary notices from the Software, User Manual or any portion thereof, including without limitation, any component of the Software code of any kind or form which may be provided to Employer to enable Employer to access and/or use the Software.
- 4.4 If BE determines that a service issue reported by Employer is (i) due to modification of the Software by Employer, (ii) a result of Employer's failure to comply with the operating instructions set forth in the current version of the User Manuals, (iii) due to Employer's failure to comply with the terms of this Agreement, then all of BE's time and expenses associated with providing

support relating to or correcting such problem, shall be invoiced to Employer subject to the provisions of this Agreement

- 4.5 BE does not guarantee the ability of the Employer to exchange data electronically with benefit providers or other third-party systems. BE is not responsible for the integrity of the data transmitted electronically between Employer, benefit providers and third-party systems. BE reserves the right, in its sole discretion, to charge Fulfillment service fees to Employer for providing electronic data exchange capabilities between Employer and third-party system or benefit provider.
- 4.6 Employer shall be solely responsible for all third-party use of the Software and Professional or Shared Services including, but not limited to, insurance brokers, subcontractors, or any other party whatsoever. Employer shall indemnify, defend and hold BE harmless for any and all errors and omissions caused by such third-party users.

5.0 Ownership and Confidentiality

- 5.1 Employer understands and agrees that it has no right, title, interest or ownership in, or to, the Software, User Manuals, or any of its components, programming code or data structures, or any other materials provided to Employer related to the use of the Software, or any copies or modifications of the Software, User Manuals, or any components, code or data structures thereof or in the Software or any other materials provided to Employer related to the use of the Software, except to the extent that BE grants Employer the right to use the Software, User Manual and related materials.
- 5.2 Employer understands and agrees that the Software, User Manuals, related materials and all security information and passwords issued for access to the Software (collectively BE Confidential Information") constitutes confidential and proprietary information and trade secrets of BE or its suppliers. Employer shall maintain all BE Confidential Information in strict confidence and shall not publish, communicate, disclose or permit to be disclosed such information in any way to third parties. Employer agrees to take all appropriate steps to ensure that all persons having access to the Software or User Manuals shall refrain from any unauthorized reproduction or disclosure of BE's Confidential Information. Notwithstanding anything to the contrary herein, BE's Confidential Information shall not include information that: (i) is known or available through other lawful sources not bound by a confidentiality obligation to BE, (ii) is or becomes publicly known through no fault of the receiving party or its agents, (iii) is required to be disclosed pursuant to law or court order, provided that the discloser provides BE with reasonable prior notice of any such compulsory disclosure and permits BE to object, intervene or appeal such order.
- 5.3 BE understands and agrees that any Employer data generated and stored by the software on behalf of Employer by or through Employer's use of the Software constitute confidential and proprietary information and trade secrets of Employer and shall remain Employer sole and exclusive property.

6.0 Fees

- 6.1 All amounts due under this Agreement shall be paid in United States Dollars (USD).
- 6.2 **Per-Employee-Per-Month ("PEPM") Fees** – In consideration for any Software and Services provided hereunder that are specified in Exhibit D as being provided on a PEPM basis, Employer agrees to pay BE, commencing with the Effective Date of this Agreement, a PEPM fee, computed by multiplying the number of Employer Records (classified as Active, COBRA, FMLA, or Retired) by the PEPM rate listed in Exhibit D, according to the terms of BE's standard monthly invoice, net fifteen (15) days. Employer further agrees that the number and classification of Employee Records stored in the Software database when the census report is run shall be a bona fide and accurate representation of the number and classification of Employee Records stored in the Software database over the course of the month. Setup and implementation fees shall be invoiced, through a Project Authorization Form, upon the earlier

- of, execution of this Agreement or the initial transfer of data from Employer to BE to commence work.
- 6.3 **Per-Person-Per-Year (“PPPY”) Fees** – In consideration for any Software and Services provided hereunder that are specified in Exhibit D as being provided on a PPPY basis, Employer agrees to pay BE, commencing with the Effective Date of this Agreement, a PPPY fee, computed by multiply the number of person (defined as personnel record required by the IRS to be reported on an annual basis for ACA) by the PPPY rate listed in Exhibit D, according to the terms of BE’s standard invoice. Setup and implementation fees shall be invoiced, through a Project Authorization Form, upon the earlier of, execution of this Agreement or the initial transfer of data from Employer to BE to commence work.
- 6.4 **Minimum Fees** – In the event that, the monthly charge for PEPM services does meet or exceed the monthly “Minimum” amount specified in Exhibit D, Employer agrees to pay BE the monthly Minimum amount, according to the terms of BE’s standard invoice.
- 6.5 **Non-PEPM Fees** – In consideration for any software and services provided hereunder that are not included as PEPM services (including, but not limited to one-time EDI setup fees, one-time account setup fees, per-occurrence training fees, prospecting fees, monthly data management fees, outside expenses etc.), Employer agrees to pay BE the rates listed in Exhibit D, according to the terms of BE’s standard invoice.
- 6.6 **Travel Expenses** – Employer shall pay or reimburse BE for any expense incurred for travel in connection with BE’s performance of the Services provided under this Agreement. Employer must authorize the travel costs in advance.
- 6.7 **Other fees** – If BE is to incur any additional fees or expenses that are not within the scope of the Services, BE shall notify Employer in advance for approval, and Employer shall pay the approved additional fees or expenses within the terms of the invoice. BE will not be required to provide additional services or implement any material changes, requested by the Employer, until the new terms and pricing have been agreed upon.
- 6.8 Employer shall pay or reimburse BE and shall be responsible for and shall indemnify, defend and hold BE harmless from any applicable sales, use, excise, value added, utility or similar or other taxes related to the fees and services provided under this Agreement.
- 6.9 Without affecting the Employer’s obligations, described in this Agreement, Employer may utilize its broker or other third-party to facilitate payment to BE for the services set forth in the SOW, attached herein.
- 6.10 Unless specified otherwise in SOW, the Fees shown in SOW shall remain in effect for the duration of the terms specified in Section 1.3. BE reserves the right to increase its Fees for any Initial or Renewal Period of this Agreement to current prevailing rates.
- 6.11 Any late payment shall accrue interest at eighteen (18) percent per annum of the late amount or the maximum amount allowed by law, whichever is less.
- 6.12 Employer has agreed to recompense BE for Services and Software provided in SOW. Without affecting Employer’s obligations described in this section, Section 6.2 and Section 6.3.
- 7.0 Discounts/Commission Splits**
- 7.1 Employer has discounts available when using a BE carrier partner.
- 7.2 Discount is not available if Employer’s contract is in conflict with BE’s contract with the same carrier where discount is being provided.
- 7.3 To receive discount, initial enrollment period needs to have a minimum of 20% participation in the product offering that triggers the discount to be in place. For every 1% below the minimum participation, 10% will be reduced from the discount provided.
- 7.4 All discounts to be applied after the initial open enrollment closes and verification that participation numbers have been met.
- 7.5 Discounts are able to continue in if new products are offered in subsequent years along with the same participation requirements as in section 7.3.
- 7.6 Review of Discounts, commission splits, overrides and PEPM fees received will take place annually. BE reserves the right to remove any discounts or offerings at the sole discretion of BE.
- 8.0 Termination**
- 8.1 BE may terminate this Agreement upon any of the following events;
- 8.1.1 If Employer fails to pay any amounts payable to BE against any written invoice submitted by BE in accordance with the Texas Prompt Payment Act;
- 8.1.2 If the third-party fails to pay any amounts due to BE, based on Employer exercising its options in Section 6.9, within thirty (30) business days after Employer’s and third-party’s receipt of written notice of such nonpayment from BE;
- 8.1.3 If Employer breaches any Intellectual Property Rights of BE or its suppliers in the Software;
- 8.1.4 If Employer attempts to manipulate the number of Employee Records on the last day of the month.
- 8.1.5 If Employer breaches its confidentiality obligations under this Agreement;
- 8.1.6 If Employer breaches any of the other terms, covenants, restrictions or conditions of this Agreement or its License to the Software and fails to cure the breach within thirty (30) days after Employer’s receipt of written notice of such breach from BE;
- 8.1.7 If Employer becomes insolvent or admits a general inability to pay its debts as they become due;
- 8.1.8 If Employer makes a general assignment for the benefit of creditors; or
- 8.1.9 If Employer files a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy that is not dismissed within sixty (60) days after the filing date.
- 8.2 Employer may terminate this Agreement and the rights and licenses granted upon any of the following events:
- 8.2.1 If BE breaches any of its obligations under this Agreement and fails to cure the breach within thirty (30) days after receipt of written notice of such breach from Employer;
- 8.2.2 If BE becomes insolvent or admits a general inability to pay its debts as they become due;
- 8.2.3 If BE makes a general assignment for the benefit of creditors; or
- 8.2.4 If BE files a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy that is not dismissed within sixty (60) days after the filing date.
- 8.3 In the event of the expiration or termination of this Agreement, BE may discontinue the Services and Employer’s access to, and use of the Software, provided however, within thirty (30) days following said termination or expiration date, BE will deliver to Employer all Employer data stored by the Software on BE’s or third-party equipment, as of the date of termination or expiration. Employer agrees to pay reasonable data transition expenses, charged at the manual rate for configuration and transfer services to a new administrator or back to Employer.
- 9.0 Warranties and Limitations of Liability**
- 9.1 BENEFIT EXPRESS SERVICES WARRANTS THAT DURING THE TERM IT SHALL PERFORM THE SERVICES UNDER THIS AGREEMENT USING COMMERCIALY REASONABLE EFFORT. BENEFIT EXPRESS SERVICES SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 9.2 EMPLOYER UNDERSTANDS AND AGREES THAT BENEFIT EXPRESS SERVICES’ LIABILITY FOR ANY DAMAGES SUFFERED BY EMPLOYER, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY THEORY, IN NEGLIGENCE, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT PAID TO BENEFIT EXPRESS SERVICES BY EMPLOYER PURSUANT TO THIS

AGREEMENT DURING THE ONE (1) MONTH IMMEDIATELY PRIOR TO THE DATE UPON WHICH EMPLOYER'S CLAIM OR CAUSE OF ACTION AROSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, BE SHALL NOT BE LIABLE TO EMPLOYER OR OTHERS FOR PUNITIVE OR EXEMPLARY DAMAGES OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OR EMPLOYER, EVEN IF BENEFIT EXPRESS SERVICES HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 9.3 FURTHER, EMPLOYER UNDERSTANDS AND AGREES THAT THE USE OF THE SOFTWARE MAY FROM TIME TO TIME BE INTERRUPTED, AND BENEFIT EXPRESS SERVICES MAKES NO WARRANTY OR REPRESENTATION TO EMPLOYER THAT THE SOFTWARE WILL BE FUNCTIONAL AND AVAILABLE AT ALL TIMES. EMPLOYER SHALL NOT BE ENTITLED TO RECOVER FOR ANY LOSSES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF DATA, WHICH MAY RESULT FROM SUCH INTERRUPTION OF AVAILABILITY OF THE SOFTWARE. NOTWITHSTANDING ANY OTHER LIMITATION OF LIABILITY IN THIS AGREEMENT, IN THE EVENT THAT USE OF THE SOFTWARE IS INTERRUPTED FOR MORE THAN A 24 HOURS PERIOD, BENEFIT EXPRESS SERVICES AGREES TO CREDIT EMPLOYER IN AN AMOUNT EQUAL TO THE PRORATED PEPM FEES (AS SET FORTH IN EXHIBIT D) OTHERWISE DUE FROM THE EMPLOYER FOR EACH DAY THAT THE SOFTWARE IS NOT FUNCTIONAL OR OTHERWISE UNAVAILABLE.

10.0 Indemnification

- 10.1 In the event any suit or claim is brought against Employer based on a claim that the authorized use of the Software under this Agreement infringes any existing Intellectual Property Rights of a third party, BE agrees that:
- 10.1.1 To the extent that the claims or proof of the suit involve claims or factual allegations that the Software infringes any existing Intellectual Property Rights of a third party, expense and hold Employer harmless thereof, provided however that Employer promptly notifies BE in writing and gives BE complete authority and the information required to defend or settle the suit;
- 10.1.2 BE shall pay any settlement of the suit or claim agreed to by BE and to the extent that any judgment in any such suit is based on proof that the Software infringes any existing Intellectual Property rights of a third-party, BE shall pay all damages and costs awarded against Employer related thereto; provided however that BE shall not be responsible for any cost, expense or compromise made or incurred by Employer without BE's prior written consent;
- 10.1.3 BE shall allow Employer to participate in the defense of the suit at Employer's own expense, if Employer so elects; and
- 10.1.4 Notwithstanding anything to the contrary in this Agreement, BE shall have no obligation of indemnity with regard to any modifications of any kind by Employer, regardless of whether such changes were authorized.
- 10.2 In the event any suit or claim is brought against BE based on a claim that Employer improperly collected, used or disseminated any information or other data using the Software, Employer agrees that:
- 10.2.1 Employer shall defend the suit at its expense and hold BE harmless therefrom, provided however that BE promptly notifies Employer in writing and gives Employer complete authority and the information required to defend or settle the suit;
- 10.2.2 Employer shall allow BE to participate in the defense of the suit of BE's own expense, if BE so elects.

11.0 Protected Health Information

- 11.1 Employer and BE agree to comply and modify the Agreement as necessary to comply with the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as set forth in Title 45, Parts 160 and 164 of the Code of Federal Regulations (the "CFR").
- 11.2 Capitalized terms not otherwise defined in the Agreement shall have the meanings given to them in Title 45, Parts 160 and 164 of the CFR and are incorporated herein by reference.
- 11.3 Employer shall use and/or disclose PHI only to the extent necessary to satisfy Employer's obligations under the Agreement. BE shall use and/or disclose PHI only to the extent necessary to satisfy BE's obligations under the Agreement. To the extent that the parties can limit uses and/or disclosures of PHI to a Limited Data Set (as defined in the HIPAA Regulations), each party agrees to do so. If use of a Limited Data Set is impracticable, the party using and/or disclosing PHI will document the necessity for use of additional PHI.
- 11.4 Neither party shall use or disclose any PHI received from or on behalf of a Covered Entity or Individual, except as permitted or required by the Agreement, as required by law or as otherwise authorized in writing by the respective party, a Covered Entity or an Individual.
- 11.5 BE and Employer shall ensure that any employee or subcontractor to whom it provides PHI agrees to the same restrictions and conditions that apply through this Agreement with respect to PHI.
- 11.6 All other terms and conditions covering the definition, notification, and remediation regarding the protection of PHI, shall be set forth in Exhibit C, Business Associate Addendum

12.0 Miscellaneous

- 12.1 Assignment. Neither party shall assign this Agreement or transfer, by operation of law or otherwise, any of its respective rights or obligations under this Agreement without the prior written consent of the other party, such consent shall not be unreasonably withheld. Except that, either party may assign the Agreement without such consent in connection with any merger, consolidation, any sale of all or substantially all of the party's assets or any other transaction in which more than fifty percent (50%) of the party's voting securities are transferred provided that the successor or assignee assumes all of such party's obligations hereunder. Any assignment or transfer in violation of this section shall be void.
- 12.2 Waiver. No term or provision of this Agreement shall be deemed waived and no breach shall be deemed excused, unless such waiver is in writing and signed by the Party who is alleged to have waived the term or provision.
- 12.3 Excusable Delay. Neither BE nor Employer shall be deemed to be in default of any provision of this Agreement or for any failure in performance, resulting from acts or events beyond the reasonable control of BE or Employer, as the case may be. For purposes of this Agreement, such acts shall include, but not be limited to, acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes or other such major events beyond BE's or Employer's reasonable control. This section shall not excuse Employer's payment obligations.
- 12.4 Governing Law and Dispute Resolution. This Agreement is governed by and construed in accordance with the laws of the State of Texas, without giving effect to any choice or conflict of law provisions, principles or rules (whether of the State of Texas or any other jurisdiction) that would cause the application of any laws of any jurisdiction other than the State of Texas. The parties agree that all claims, actions, suits and proceedings between them relating to this Agreement will be filed, tried and litigated only in the Circuit or District Courts of Hildago County, Texas. In connection with the foregoing, the parties consent to the jurisdiction and venue of those courts and expressly waive any claims or defenses of lack of jurisdiction of or proper venue by those courts.

- 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:

(Signed)

(Printed)

(Title)

(Date)

COUNTY OF HIDALGO:

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

ATTEST
Arturo Guajardo Jr.
Arturo Guajardo, 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: 8/25/20 *grb*

Exhibit A - Notices and Contact Information

1.0 Notices from Employer shall be sent to:

Benefit Express Services, LLC
Attn: Kelly McMillen
1700 East Golf Road, Suite 1000
Schaumburg, IL 60173

2.0 Notices from Benefit Express Services, LLC be sent to:
(Please provide Employer Contact Information)

Company Name	Hidalgo County
Company Street Address	2802 S. Business Hwy. 281
Company Street City	Edinburg
Company Street State	Texas
Company Street Postal Code	78539
Primary Contact Name	
Primary Contact Phone Number	
Primary Contact Fax Number	
Primary Contact Email Address	
Company Billing Address	
Company Billing City	
Company Billing State	
Company Billing Postal Code	
Billing Contact Name	
Billing Contact Phone Number	
Billing Contact Fax Number	
Billing Contact Email Address	

This Health Insurance Portability & Accountability Act Business Associate Addendum (“HIPAA Addendum”) is an addendum to this Agreement (and incorporated therein by reference) by and between Benefit Express Services, LLC (“BE” or “Business Associate”) and Employer (“Employer”, “Client”, or “Covered Entity”). In order, to provide such services to Employer, the Business Associate must have access to certain protected health information (“Protected Health Information” or “PHI”), as defined in the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Standards”) set forth by the U.S. Department of Health and Human Services (“HHS”) pursuant to the Health Insurance Portability and Accountability Act of 1996, (“HIPAA”) and amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), part of the American Recovery and Reinvestment Act of 2009 (“ARRA”), the Genetic Information Nondiscrimination Act of 2008 (“GINA”), and the final regulations to such Acts promulgated in January 2013;

To comply with the requirements of the Privacy Standards, the Covered Entity must enter into this Business Associate Addendum with the Business Associate. Now, therefore, in consideration of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

I. Definitions

The following terms used in this Addendum shall have the same meaning as those terms in the Privacy Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Secretary, Subcontractor, and Use. If other terms are used, but not otherwise defined under this Business Associate Addendum, such terms shall then have the same meaning as those terms in the Privacy Rule.

- (a) **Business Associate.** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103.
- (b) **Covered Electronic Transactions.** “Covered Electronic Transactions” shall have the meaning given the term “transaction” in 45 CFR §160.103.
- (c) **Covered Entity.** “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103.
- (d) **Electronic Protected Health Information.** “Electronic Protected Health Information” shall have the same meaning as the term “electronic protected health information” in 45 CFR §160.103.
- (e) **Genetic Information.** “Genetic Information” shall have the same meaning as the term “genetic information” in 45 CFR §160.103
- (f) **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (g) **Individual.** “Individual” shall have the same meaning as the term “individual” in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- (h) **Privacy Rule.** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.
- (i) **Protected Health Information (PHI).** “Protected Health Information (PHI)” shall have the same meaning as the term “protected health information” in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of a Covered Entity pursuant to this Addendum.
- (j) **Required By Law.** “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §164.103.
- (k) **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- (l) **Standards for Electronic Transactions Rule.** “Standards for Electronic Transactions Rule” means the final regulations issued by HHS concerning standard transactions and code sets under the Administration Simplification provisions of HIPAA, 45 CFR Part 160 and Part 162.
- (m) **Security Incident.** “Security Incident” shall have the same meaning as the term “security incident” in 45 CFR §164.304.
- (n) **Security Rule.** “Security Rule” shall mean the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164, subpart C.
- (o) **Subcontractor.** “Subcontractor” shall have the same meaning as the term subcontractor in 45 CFR §160.103.
- (p) **Transaction.** “Transaction” shall have the meaning given the term “transaction” in 45 CFR §160.103
- (q) **Unsecured Protected Health Information.** “Unsecured Protected Health Information” shall have the meaning given the term “unsecured protected health information” in 45 CFR §164.402.

II. Safeguarding Privacy and Security of Protected Health Information

- (a) **Permitted Uses and Disclosures.** The Business Associate is permitted to use and disclose Protected Health Information that it creates or receives on the Covered Entity’s behalf or receives from the Covered Entity (or another business associate of the Covered Entity) and to request Protected Health Information on the Covered Entity’s behalf (collectively, “Covered Entity’s Protected Health Information”) only:
 - i) **Functions and Activities on the Covered Entity’s Behalf.** To perform those services referred in the Exhibit A.
 - ii) **Business Associate’s Operations.** For the Business Associate’s proper management and administration or to carry out the Business Associate’s legal responsibilities, provided that, with respect to disclosure of the Covered Entity’s Protected Health Information, either:
 - (a) The disclosure is Required by Law; or
 - (b) The Business Associate obtains reasonable assurance from any person or entity to which the Business Associate will disclose the Covered Entity’s Protected Health Information that the person or entity will:

- (i) Hold the Covered Entity's Protected Health Information in confidence and use or further disclose the Covered Entity's Protected Health Information only for the purpose for which the Business Associate disclosed the Covered Entity's Protected Health Information to the person or entity or as Required by Law; and
- (ii) Promptly notify the Business Associate (who will in turn notify the Covered Entity in accordance with the breach notification provisions) of any instance of which the person or entity becomes aware in which the confidentiality of the Covered Entity's Protected Health Information was breached.
- (c) To de-identify the information in accordance with 45 CFR 164.514(a) – (c) as necessary to perform those services required under the Addendum.
- iii) **Minimum Necessary.** The Business Associate will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of the Covered Entity's Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that the Business Associate will not be obligated to comply with this minimum-necessary limitation if neither the Business Associate nor the Covered Entity is required to limit its use, disclosure or request to the minimum necessary. The Business Associate and the Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act.
- (b) **Prohibition on Unauthorized Use or Disclosure.** The Business Associate will neither use nor disclose the Covered Entity's Protected Health Information, except as permitted or required by this Addendum or in writing by the Covered Entity or as Required by Law. This Agreement does not authorize the Business Associate to use or disclose the Covered Entity's Protected Health Information in a manner that will violate Subpart E of 45 CFR Part 164 if done by the Covered Entity.
- (c) **Information Safeguards.**
 - i) **Privacy of the Covered Entity's Protected Health Information.** The Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of the Covered Entity's Protected Health Information. The safeguards must reasonably protect the Covered Entity's Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made to a use or disclosure otherwise permitted by this Addendum.
 - ii) **Security of the Covered Entity's Electronic Protected Health Information.** The Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that the Business Associate creates, receives, maintains, or transmits on the Covered Entity's behalf as required by the Security Rule. The Business Associate will comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of protected health information other than as provided for by the Addendum.
 - iii) **Policies and Procedures.** The Business Associate shall maintain written policies and procedures, conduct a risk analysis, and train and discipline of its workforce.
- (d) **Subcontractors and Agents.** In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, the Business Associate will ensure that any of its Subcontractors and agents that create, receive, maintain, or transmit Protected Health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
- (e) **Prohibition on Sale of Records.** As of the effective date specified by HHS in final regulations to be issued on this topic, the Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an individual unless the Covered Entity or Business Associate obtained from the individual, in accordance with 45 CFR §164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that individual, except as otherwise allowed under the HITECH Act.
- (f) **Prohibition on Use or Disclosure of Genetic Information.** Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA rules.
- (g) **Penalties for Noncompliance.** The Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the privacy rule and security rule under the HIPAA Rules, as amended by the HITECH Act.

III. Compliance with Electronic Transactions Rule

If the Business Associate conducts in whole or part Electronic Transactions on behalf of the Covered Entity for which HHS has established standards, the Business Associate will comply, and will require any Subcontractor or agent it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transactions Rule. The Business Associate shall also comply with the National Provider Identifier requirements, if and to the extent applicable.

IV. Obligations of the Covered Entity

- (a) **Notice of Privacy Practices.** Client shall provide BE with the notice of privacy practices that it produces in accordance with 45 CFR Section 164.520, as well as any changes to such notice. BE shall not be responsible for the content of the Notice nor any error or omission in the notice.
- (b) **Notification of Changes and Restrictions.** The Covered Entity shall notify the Business Associate of:
 - i. Any limitation(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information;
 - ii. Any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Business Associate's use or disclosure of Protected Health Information; and

- iii. Any restriction to the use or disclosure of Protected Health Information that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.
 - (c) **Responsibility for Further Disclosures.** Client shall be responsible for ensuring that further disclosure by Client of PHI (including, but not limited to, disclosures to employers, plan sponsors, agents, vendors and group health plans) complies with the requirements of HIPAA and applicable federal and state laws.
- V. Permissible Requests by the Covered Entity**
- The Covered Entity shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.
- VI. Individual Rights**
- (a) **Access.** The Business Associate will, within twenty-five (25) calendar days following the Covered Entity's request, make available to the Covered Entity or, at the Covered Entity's direction, to an individual (or the individual's personal representative) for inspection and obtaining copies of the Covered Entity's Protected Health Information about the individual that is in the Business Associate's custody or control, so that the Covered Entity may meet its access obligations under 45 CFR §164.524. Effective as of the date specified by HHS, if the Protected Health Information is held electronically in a designated record set in the Business Associate's custody or control. The Business Associate will provide an electronic copy in the form and format specified by the Covered Entity if it is readily producible in such format; if it is not readily producible in such format, the Business Associate will work with the Covered Entity to determine an alternative form and format as specified by the Covered Entity to meet its electronic access obligations under 45 CFR 164.524.
 - (b) **Amendment.** The Business Associate will, upon receipt of written notice from the Covered Entity, promptly amend or permit the Covered Entity access to amend any portion of the Covered Entity's Protected Health Information in a designated record set as directed or agreed to by the Covered Entity, so that the Covered Entity may meet its amendment obligations under 45 CFR §164.526.
 - (c) **Disclosure Accounting.** The Business Associate will maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 CFR §164.528.
 - i. **Disclosures Subject to Accounting.** The Business Associate will record the information specified below ("Disclosure Information") for each disclosure of the Covered Entity's Protected Health Information, not excepted from disclosure accounting as specified below, that the Business Associate makes to the Covered Entity or to a third party.
 - ii. **Disclosures Not Subject to Accounting.** The Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of the Covered Entity's Protected Health Information if the Covered Entity need not account for such disclosures under the HIPAA Rules.
 - iii. **Disclosure Information.** With respect to any disclosure by the Business Associate of the Covered Entity's Protected Health Information that is not excepted from disclosure accounting under the HIPAA Rules, the Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:
 - 1. **Disclosure Information Generally.** Except for repetitive disclosures of the Covered Entity's Protected Health Information as specified below, the Disclosure Information that the Business Associate must record for each accountable disclosure is (1) the disclosure date, (2) the name and (if known) address of the entity to which the Business Associate made the disclosure, (3) a brief description of the Covered Entity's Protected Health Information disclosed, and (4) a brief statement of the purpose of the disclosure.
 - 2. **Disclosure Information for Repetitive Disclosures.** For repetitive disclosures of the Covered Entity's Protected Health Information that the Business Associate makes for a single purpose to the same person or entity (including the Covered Entity), the Disclosure Information that the Business Associate must record is either the Disclosure Information specified above for each accountable disclosure, or (1) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (2) the frequency, periodicity, or number of the repetitive accountable disclosures; and (3) the date of the last of the repetitive accountable disclosures.
 - iv. **Availability of Disclosure Information.** The Business Associate will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates (3 years for disclosures related to an Electronic Health Record, starting with the date specified by HHS). The Business Associate will make the Disclosure Information available to the Covered Entity within fifty (50) calendar days following the Covered Entity's request for such Disclosure Information to comply with an individual's request for disclosure accounting. Effective as of the date specified by HHS, with respect to disclosures related to an Electronic Health Record, the Business Associate shall provide the accounting directly to an individual making such a disclosure request, if a direct response is requested by the individual. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.
 - (d) **Restriction Agreements and Confidential Communications.** The Covered Entity shall notify the Business Associate of any limitations in the notice of privacy practices of Covered Entity under 45 CFR §164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information. The Business Associate will comply with any agreement that the Covered Entity makes that either (i) restricts use or disclosure of the Covered Entity's Protected Health Information pursuant to 45 CFR §164.522(a), or (ii) requires confidential communication about the Covered Entity's Protected Health Information pursuant to 45 CFR §164.522(b), provided that the Covered Entity notifies the Business Associate in writing of the restriction or confidential communication obligations that the Business Associate must follow. The Covered Entity will promptly notify the Business Associate in writing of the termination of any such restriction agreement or confidential communication requirement and, with respect to termination of any such restriction agreement, instruct the Business Associate whether any of the Covered Entity's Protected Health

Information will remain subject to the terms of the restriction agreement. Effective February 17, 2010 (or such other date specified as the effective date by HHS), the Business Associate will comply with any restriction request if: (i) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (ii) the Protected Health Information pertains solely to a health care item or service for which the health care provider involved has been paid out-of-pocket in full.

VII. Breaches and Security Incidents

(a) Reporting

- i. **Impermissible Use or Disclosure.** The Business Associate will report to Covered Entity any use or disclosure of Protected Health Information not permitted by this Addendum not more than fifteen (15) calendar days after Business Associate becomes aware of such non-permitted use or disclosure.
- ii. **Privacy or Security Breach.** The Business Associate will report to the Covered Entity any use or disclosure of the Covered Entity's Protected Health Information not permitted by this Addendum of which it becomes aware, including breaches of Unsecured Protected Health Information as required by 45 CFR 164.40, and any Security Incident of which it becomes aware. The Business Associate will make the report to the Covered Entity's Privacy Official not more than fifteen (15) calendar days after the Business Associate becomes aware of such non-permitted use or disclosure. If a delay is requested by a law-enforcement official in accordance with 45 CFR §164.412, the Business Associate may delay notifying the Covered Entity for the applicable time period. The Business Associate's report will at least:
 1. Identify the nature of the Breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of the Breach;
 2. Identify the Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or Breach (such as whether full name, social security number, date of birth, home address, account number or other information were involved) on an individual basis;
 3. Identify who made the non-permitted use or disclosure and who received the non-permitted use or disclosure;
 4. Identify what corrective or investigational action the Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects and to protect against any further Breaches;
 5. Identify what steps the individuals who were subject to a Breach should take to protect themselves; and
 6. Provide such other information, including a written report and risk assessment under 45 CFR §164.402, as the Covered Entity may reasonably request.
- iii. **Security Incidents.** The Business Associate will report to The Covered Entity any Security Incident of which the Business Associate becomes aware. The Business Associate will make this report once per month, except if any such Security Incident resulted in a disclosure not permitted by this Addendum or Breach of Unsecured Protected Health Information, Business Associate will make the report in accordance with the provisions set forth above.

- (b) **Mitigation.** The Business Associate shall mitigate, to the extent practicable, any harmful effect known to the Business Associate resulting from a use or disclosure in violation of this Addendum.

VIII. Term and Termination

- (a) **Term.** The term of this Addendum shall be effective as of the date specified within the Service Agreement, and shall terminate when all Protected Health Information provided by the Covered Entity to the Business Associate, or created or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this section.
- (b) **Right to Terminate for Cause.** The Covered Entity may terminate this Addendum if it determines, in its sole discretion, that the Business Associate has breached a material term of this Addendum, and upon written notice to the Business Associate of the breach, the Business Associate fails to cure the breach within thirty (30) calendar days after receipt of the notice. Any such termination will be effective immediately or at such other date specified in the Covered Entity's notice of termination.
- (c) **Treatment of Protected Health Information on Termination.**
- i. **Return or Destruction of Covered Entity's Protected Health Information as Feasible.**
Upon termination or other conclusion of the Service Agreement, the Business Associate will, if feasible, return to the Covered Entity or destroy all of the Covered Entity's Protected Health Information in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of the Covered Entity's Protected Health Information. This provision shall apply to Protected Health Information that is in the possession of Subcontractors or agents of the Business Associate. Further, the Business Associate shall, upon request, require any such Subcontractor or agent to certify to the Business Associate that it returned to the Business Associate (so that the Business Associate may return it to the Covered Entity) or destroyed all such information which could be returned or destroyed.
 - ii. **Procedure When Return or Destruction Is Not Feasible.** The Business Associate will identify any of the Covered Entity's Protected Health Information, including any that the Business Associate has disclosed to subcontractors or agents as permitted under this Addendum, that cannot feasibly be returned to the Covered Entity or destroyed and explain why return or destruction is infeasible. The Business Associate will limit its further use or disclosure of such information to those purposes that make return or destruction of such information infeasible. The Business Associate will complete these obligations as promptly as possible, but not later than thirty (30) calendar days following the effective date of the termination or other conclusion of this Addendum.
 - iii. **Continuing Privacy and Security Obligation.** The Business Associate's obligation to protect the privacy and safeguard the security of the Covered Entity's Protected Health Information as specified in this Addendum will be continuous and survive termination or other conclusion of this Addendum.

IX. Miscellaneous Provisions

- (a) **Definitions.** All terms that are used but not otherwise defined in this Addendum shall have the meaning specified under HIPAA, including its statute, regulations and other official government guidance.
- (b) **Inspection of Internal Practices, Books, and Records.** The Business Associate will make its internal practices, books, and records relating to its use and disclosure of the Covered Entity's Protected Health Information available to the Covered Entity and to HHS to determine compliance with the HIPAA Rules.
- (c) **Amendment to Agreement.** This Addendum may be amended only by a written instrument signed by the parties. In case of a change in applicable law, the parties agree to negotiate in good faith to adopt such amendments as are necessary to comply with the change in law.
- (d) **No Third-Party Beneficiaries.** Nothing in this Addendum shall be construed as creating any rights or benefits to any third parties.
- (e) **Regulatory References.** A reference in this Business Associate Addendum to a section in the Privacy Rule means the section as in effect or as amended.
- (f) **Survival.** The respective rights and obligations of the Business Associate under Section VII of this Addendum shall survive the termination of this Addendum.
- (g) **Interpretation.** Any ambiguity in this Addendum shall be resolved to permit the Covered Entity to comply with the HIPAA Rules.
- (h) **Notices.** All notices hereunder shall be in writing and delivered by hand, by certified mail, return receipt requested or by overnight delivery. Notices shall be directed to the parties at their respective addresses or at such other addresses as the parties may from time to time designate in writing.
- (i) **Entire Agreement; Modification.** This Business Associate Agreement represents the entire agreement between the Business Associate and the Covered Entity relating to the subject matter hereof. No provision of this Business Associate Addendum may be modified, except in writing, signed by the parties.
- (j) **Assistance in Litigation or Administrative Proceedings.** The Business Associate shall make itself, and any subcontractors, employees or agents assisting the Business Associate in the performance of its obligations under this Agreement, available to the Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Covered Entity, its directors, officers, or employees based upon a claimed violation of HIPAA, the HIPAA regulations, or other laws relating to security and privacy, except where the Business Associate or its subcontractors, employees, or agents are named as an adverse party.
- (k) **Binding Effect.** This Business Associate Addendum shall be binding upon the parties hereto and their successors and assigns.
- (l) **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by the law of Delaware, except to the extent preempted by federal law.
- (m) **Severability.** The invalidity or unenforceability of any provisions of this Addendum shall not affect the validity or enforceability of any other provision of this Addendum, which shall remain in full force and effect.
- (n) **Construction and Interpretation.** The section headings contained in this Addendum are for reference purposes only and shall not in any way affect the meaning or interpretation of this Addendum. This Addendum has been negotiated by the parties at arm's-length and each of them has had an opportunity to modify the language of the Addendum. Accordingly, the Addendum shall be treated as having been drafted equally by the parties and the language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. This Addendum may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- (o) **Enhanced Decision Support.** In the event Covered Entity selects any service within the Service Agreement containing the characteristics including but not limited to (1) employee data analytics, (2) benefits recommendation engine(s), (3) custom employee benefits analysis, or (4) other similar services (each an "Enhanced Decision Support" service) as an included service to be provided by Business Associate, then this Section IX(o) shall apply. Both parties agree that (1) Business Associate will provide de-identified participant information to a subcontractor for the purposes of conducting the Enhanced Decision Support services, (2) the de-identified information will not be considered an unauthorized use or disclosure under Subpart E of 45 CFR Part 164, (3) the de-identified information, shared by Business Associate with the subcontractor, will not be considered a sale of records notwithstanding the fact that the subcontractor shall also thereafter own the de-identified information ("Resultant Data"), and, if it is considered a sale of records, Covered Entity is authorizing this sale of records, per 45 CFR Part 164.508, and (4) Business Associate will not be required to return or destroy the de-identified information, per 45 CFR Part 164.306, as the information provided to the subcontractor does not contain any identifiable PHI or PII.

Exhibit D - Statement of Work (SOW)

HR Support Package

HR Support Package offers implementation services as well as year-round support with a dedicated Client Delivery Manager.

HR Support Features:

- Employee self-service user interface (UI)
- Plan comparison
- Access to video libraries
- New Hire email notifications

HR Support Implementation - Included Services¹:

- Welcome/Introduction call
- “Kick off” and initial planning meeting
- Dedicated Implementation Specialist (IS) for the duration of the implementation project; IS will facilitate regular project communication.
- Implementation project plan and requirements to be reviewed by both Employer and BE²
- Import employee and dependent data to BE system in BE standard layout from up to two (2) data sources (data in standard BE layout to be provided by the Employer).³
- Provision of up to eight (8) carrier file connections⁴
- Ability to add new employees to the platform via standard import / manual entry
- Configuration of eight (8) standard self-service life events plus two (2) at clients discretion⁵
- Up to three (3) iterations of content changes throughout the Implementation process. Process to be managed through a single point of client contact.⁶
- Provision of sample test lives (up to 5 test cases per eligibility group) for site and plan testing coordination with Employer group⁷
- Employer is responsible for reviewing and updating employee, coverage/election and plan information (as necessary)⁸
- Full access to standard reports will be made available during implementation based on client administrative needs.⁹
- System overview with Q&A for the Employer HR Team – includes a tutorial on how to:¹⁰

¹ The following services are included for the Employer or for each Employer Group under this SOW

² The sixty (60) days required for implementation does not begin to run until BE has received all necessary documentation from Employer (i.e. completed implementation packets; SPDs; SBCs)

³ Election data load will be completed for plans requiring Evidence of Insurability (EOI) and Medical where ACA services are purchased.

⁴ Each physical file is counted as a carrier connection. Payroll/HRIS not included in eight (8) carrier connections.

⁵ Included during initial implementation for standard events such as Birth/Adoption, Marriage, Divorce/Dissolution of Domestic Partner, Gains Coverage, Loses Coverage, Death of a Dependent. Additional fees will apply for self-service life events configured and tested after implementation is complete.

⁶ Additional Implementation content updates beyond three (3) iterations will incur the hourly fee.

⁷ Number of test lives determined based on benefit class and scenarios for the client, up to two (2) per benefit class. All individual test cases requested outside of the standard provided are the responsibility of the client.

⁸ Employer is responsible for employee data and election and updates to the system data outside of annual enrollment.

⁹ Custom reports that require development resources may be created at an additional fee.

¹⁰ See Fee Schedule for on-site training support.

- Change Benefit Level Settings
- Add/Update Employee demographic, indicative data and enrollment changes
- Address most common carrier data discrepancies
- Run Standard Reports¹¹
- Implementation of the coming/new plan year as an Active Enrollment is included with elections requiring Evidence of Insurability (EOI) or where Medical is required for ACA services.

Optional Additional Services - HR Support Implementation

Services listed in this section are not included in the core pricing but are available for an additional fee.

- Data Import Services and Audit: BE will run standard implementation audits on current employee, dependent, (and election data where applicable) and send discrepancies to the Employer Group for review. Ask Account Executive for pricing.
- Link to other 3rd part Web sites (e.g. carriers) via single sign-on (SSO) \$5,000/connection¹²
- Offsite Training - \$1,500/day/trainer + travel expenses per trainer (ask your account executive for specific quotes)

HR Support On-Going Services - Included Services

- Electronic Data Interchange (EDI)¹³
 - Employee census import in the benefitexpress standard layout is included for client use to apply ongoing new hires, terms and data changes to the platform.¹⁴
 - Included at implementation - eight (8) carrier file layouts in the PEPM and each export/connection includes:
 - Discovery/analysis – BE review the file specifications with the carrier
 - BE and Employer will define the mapping and account structure rules
 - Translation of carrier requirements into platform specifications
 - Programming of the EDI feeds
 - Testing (Structural & Scenario by BE; Data discrepancy by Employer)
 - Facilitation of auto-posting to the carrier; manual posting may incur additional fees
 - Confirm promotion to Production by Carrier
 - Provision of standard reports with deduction information
 - Additional EDI costs resulting from change requests will be subject to manual hourly rates.
- Maintenance
 - Ongoing file export running and posting to vendor SFTP
 - Support for bug fixes
 - Standard Annual enrollment rollovers once annually¹⁵
- Standard point-in-time premium reports will be made available for clients.

Optional Additional Services - HR Support On-Going Services

¹¹ Standard reports may include employee census, dependent census, election/participation/coverage, summary coverage, standard premium reports.

¹² Assumes SAML single sign-on capabilities landing the employee on the vendor website where navigation and processing can occur

¹³ EDI services require 500 life minimum.

¹⁴ Custom census layouts will incur a fee.

¹⁵ See separate Included Annual Enrollment section for details.

Services listed in this section are not included in the core pricing but are available for an additional fee.

- Additional Carrier EDI Connections: \$2,500/per feed setup
- Data Import Services:
 - BE will import, apply and audit inbound census files to the benefits platform and send discrepancies to the Employer Group for review. Assumes once weekly processing.
- Data Export Services:
 - BE will export/run, audit and process outbound carrier export files from the benefits platform. Assumes once weekly processing.
 - BE will coordinate, research and track resolution of carrier/vendor discrepancy reports. Assumes once weekly processing.
- Custom Payroll/HRIS feeds:¹⁶
 - Payroll deductions in BE standard file layout – Unlimited
 - Payroll deductions in Client/payroll vendor format – Included in PEPM
 - All additional feeds (outside of the eight included) are subject to monthly maintenance charges of \$75/per feed.
- Process ongoing Evidence of Insurability (EOI) approvals/denials from the vendor. \$1500/month

¹⁶ BE guarantees that we will provide each payroll vendor (or Employer's HR staff) with data required to process payroll successfully; however, BE does not guarantee payroll connectivity with every provider

HR Support Annual Enrollment—Included Services

- Annual enrollment window availability on the platform to end users.
- Account structure updates for EDI mapping.
- Two (2) week minimum lead time required for standard rollover of configuration and election data for passive enrollments including plans, pricing, highlights and carrier and payroll updates.^{17/18}
- Default enrollment setting users to Elect No Coverage/Waive but retaining existing plans, tiers and rate structures. Where necessary, life insurance or other EOI triggering benefit elections will rollover.
- Up to three (3) iterations of content changes throughout the rollover process. Process to be managed through a single point of client contact.¹⁹
- Provision of sample test lives (up to 2 test cases per eligibility group) and test system to meet AE change requirements.²⁰
- Provision of standard Changes/Comparison reports for post-AE evaluation.
-

Optional Additional Services - HR Support Annual Enrollment

Services listed in this section are not included in the core pricing but are available for an additional fee.

- Active enrollments and data management changes including, but not limited to, new plans, new carriers, new exports, rate overhaul (i.e. new structures, new tiers, new calculations), enrollment questions, EOI updates or removing plans and moving elections available at an additional fee based on scope of changes.
- Client shall be responsible for monitoring and reporting dual year enrollments to the applicable carriers.

Hourly Rates (2 Hour Minimum):

- Manual work hours - \$190/hour
- Data Conversion work hours - \$295/hour²¹
- Development work hours - \$295/hour
- Carrier or Payroll feed Modification (Outside Annual enrollment) - \$295/hour

Employer Expectations For Implementation, Ongoing, and Annual Enrollment

- Employer will be responsible for provision of all plan documents to be included in electronic format on enrollment website and verify that all information included in such documents is accurate.
- Employee will be responsible for completing in a mutually agreed upon time frame an Implementation packet in benefitexpress format necessary to build the enrollment website and provide approval that all included information is accurate.
- Employer will be responsible for communicating availability of benefits website to employees.

¹⁷ Additional fees will apply for rush rollover less than 2 weeks. Time required for rollover does not begin to run until BE has received all necessary documentation from Employer (i.e. completed implementation packets; SPDs; SBCs).

¹⁸ Standard rollovers consider existing carriers, plans and basic rate changes. Any new carriers, rate overhauls, new exports, changes to EOI rules, removing plans, etc. may incur additional fees.

¹⁹ Additional Annual Enrollment rollover content updates beyond three (3) iterations will incur the hourly fee.

²⁰ Number of test lives determined based on benefit class and scenarios for the client. All individual test cases requested outside of the standard provided are the responsibility of the client.

²¹ For demographic data conversion, there is a four (4) hour minimum of work charged. For eligibility data conversion, there is a six (6) hour minimum of work charged.

- Employer will be responsible for reaching out to carriers to make sure they will accept EDI files for specific groups and notifying them of benefitexpress partnership.
- Employer will provide **BE** with the technical contact at the carrier side.
- Employer will be responsible for applying and auditing inbound data changes, processing ongoing employee status and election changes in the platform.²²
- Employer will be responsible for fixing data issues as a result of discrepancies between **the BE system** and carrier systems enrollment data.²³
- Employer will ensure that **the BE** software is updated with most up-to-date enrollment data once initial enrollments have been loaded.
- Employer will be responsible for testing the enrollment website using sample lives and approve system prior to production releases including, but not limited to, plans, rates, content and documents.

²² Optional services include benefitexpress processing ongoing employee status and election changes on the platform as a result of weekly processing. Fees will apply.

²³ Optional services include benefitexpress processing discrepancy reports from carriers including coordinating, research and tracking resolution of all processing discrepancies. Fees will apply.