

## SERVICE AGREEMENT

This Agreement is entered into as of July 1, 2018, by and between EBSO, Inc. (“EBSO”) located at 7020 North Port Washington Road, Suite 206, Glendale, WI 53217 and City of San Luis Employee Benefit Trust (the “Employer”) located at 1090 East Union Street, San Luis, AZ 85349.

When the Employer is acting as the Plan Sponsor under this Agreement, it will be referred to as the “Plan Sponsor,” and when it is acting as the Administrator under this Agreement, it will be referred to as the “Plan Administrator.” As Plan Sponsor, the Employer is acting in its capacity as the settler of the Plan (as defined below); and, as the Plan Administrator, it is acting in its fiduciary capacity.

WHEREAS, the Plan Sponsor adopted the City of San Luis Employee Benefit Trust Employee Benefit Plan, a group *Health, Dental, and Prescription Drug* Plan (the “Plan”); and

WHEREAS, the Plan Administrator has employed EBSO to provide services set forth in this Agreement to assist the Plan Administrator in administering benefits for the Plan; and

Now therefore, in consideration of the premise set forth below, it is agreed as follows:

### I DUTIES OF EBSO

EBSO shall assist the Employer with its administrative duties as Plan Administrator or Trustee under the Plan. EBSO may appoint an affiliate to perform certain services. EBSO’s services shall be limited to the following “Installation and Set-up Services” and “Recurring Administrative Services”:

#### Installation and Set-up Services:

- A. EBSO and/or its appointed affiliate shall consult with the Plan Sponsor with respect to the initial set-up of the Plan and its funding at the election of the Plan Sponsor.
- B. EBSO and/or its appointed affiliate shall furnish, at the election of the Plan Sponsor as outlined in the attached Fee Schedule: (1) sample documents to be reviewed by the Plan Sponsor with its legal counsel, for creation of customized documentation for the Plan to be approved and executed by the Employer, including board resolutions, summary plan descriptions (SPDs), Summary of Benefits and Coverage (SBC), plan documents and plan amendments (if any); and (2) sample administrative forms needed for EBSO to perform under this agreement.
- C. EBSO and/or its appointed affiliate shall assist the Plan Administrator in the initial participant enrollment process. This assistance shall consist of providing the Plan Administrator with enrollment cards, waiver forms, “evidence of good health forms” (if applicable), and any other similar forms, if needed. This assistance shall also include having Summary Plan Descriptions and ID cards printed for distribution to participants at the election of the Plan Administrator. However, it is understood and agreed that the Plan Administrator shall have the responsibility of delivering those items to the participants, having all forms completed by the participants, and providing EBSO with the information in a timely manner.
- D. EBSO or its appointed affiliate shall prepare for the Plan Administrator an initial “enrollment listing” of Plan participants which shall be compiled from the completed enrollment forms supplied by the Plan Administrator to EBSO.

#### Recurring Administrative Services:

- A. EBSO shall accept, examine and process all claims for benefit payment incurred during the term of this Agreement submitted by participants in the Plan, together with supporting documentation, to determine if the same are complete, correct and in proper order and shall assist the Plan Administrator in making the determination as to the validity of claims filed.
- B. EBSO shall calculate the amount of benefits due, in accordance with the provisions of the Documents, and notify the Plan Administrator of claims that are payable under the terms of the Documents and/or the other guidelines established by the Plan Administrator. If the determination of benefits payable with respect to a claim is not clearly set forth in the Documents but requires the use of discretion, EBSO shall refer the claim, together with a suggested claim determination, to the Plan Administrator for a final determination of the benefits payable. Subject to Section V, all claims exceeding the portion of any loss or losses required to be funded by the Plan Sponsor (the “excess

loss”) shall be referred to the Plan Sponsor’s insurer for approval, administration, and reimbursement whereupon EBSO shall have no further obligation or liability relative to such loss or losses.

If the Plan Administrator directs, in writing, EBSO to pay a claim not covered by the terms of the Plan, the claim shall be paid outside all terms of such Plan, and the written direction to pay such a claim is hereby deemed to release EBSO from any liability in connection therewith. The Plan Sponsor and the Plan Administrator hereby acknowledge that such payments will not qualify for credit toward excess loss insurance coverage, if any, and further assume all legal responsibilities for such payments.

C. **Run-in Claims Processed in Accordance with Documents.**

EBSO will perform the services set forth in Section I, Recurring Administrative Services, parts A and B, for claims that were incurred prior to the effective date and are received by EBSO prior to the termination of this Agreement. Such claims shall be processed in accordance with the Plan Sponsor’s prior health plan.

D. To the extent of funds that may be made available by the Plan Sponsor to EBSO, EBSO shall disburse funds from the Bank Account (as defined in Section IV) to or for the benefit of the Plan participants or their dependents in connection with claims for which a determination has been made that benefits are payable pursuant to the terms of the Documents and in accordance with Section IV of this Agreement.

E. As required by the Documents and applicable law, EBSO shall notify participants in the Plan or their assignees of any denial of their claim for benefits and the right to file an appeal of the denial. EBSO shall review and decide any appeals of denied claims, except those which would require the use of discretion, which shall be referred to the Plan Administrator for review.

F. EBSO and/or its appointed affiliate shall provide the Plan Administrator during the term of this Agreement with enrollment cards, waiver forms, “evidence of good health” forms (if applicable), and any similar forms if needed. However, it is understood and agreed that the Plan Administrator shall have the responsibility of delivering those items to the participants and having the forms completed by participants.

G. EBSO shall maintain an original and updated list of participants in the Plan, including full names, current addresses, social security numbers, birth dates, dates of hire, compensation (if applicable), dependent information and account balances (if applicable). However, it is understood and agreed that the Plan Administrator shall provide this information to EBSO on a timely basis. New eligible employees, eligibility changes and terminated employees shall be reported by the Plan Administrator to EBSO immediately.

H. EBSO shall calculate the amount of time to be applied against the pre-existing condition period whenever a certificate of creditable coverage is received and forward letters indicating the amount of time that is remaining for the pre-existing condition period as a part of our standard service.

I. Whenever a claim is recoded, notification will include at least the following information:

1. Appropriate ANSI code or other reason code, or both, along with a specific description of the reasons for recoding the claim.
2. A toll free phone number for the provider or for the participants and their beneficiaries (“Plan Members”) to contact EBSO to obtain additional information.
3. Procedure for the provider to follow to submit a request for review of the initial decision to recode the claim.
4. A list of the additional information that the provider must submit in a request for a review of the initial decision to recode a claim.

J. EBSO shall furnish a standard monthly report to the Employer for use in the Employer’s role as both the Plan Sponsor and the Plan Administrator. The statement shall set forth an accounting of claims for benefits received by EBSO for processing on behalf of the Plan Sponsor. Additionally, EBSO shall keep an accurate accounting record of all claims processed on behalf of the Plan and report current and cumulative claim funding requirements. During the term of this Agreement and within one hundred eighty (180) days after its termination, the Employer or an authorized agent of the Employer (as mutually agreed to by EBSO and the Employer) may, upon at least ninety (90) days prior written notice to EBSO, conduct reasonable audits of the EBSO’s records in regard to claim payments and net claim payments calculated on the basis of claim payments made under the Agreement. The Employer and such agent that have access to the information and files maintained by the EBSO will agree not to disclose any proprietary or confidential information, and to hold harmless and indemnify EBSO in writing of any liability from disclosure of such information. Audits performed on a contingency fee basis will not be allowed or supported by

EBSO. The Employer will be responsible for all costs associated with the inspection or audit. All such audits shall be subject to EBSO's external audit policy and procedures, a copy of which shall be furnished to the Employer upon request to EBSO.

EBSO shall be responsible only for the correction of errors identified in specific claim payments and net claim payments subject to the terms and conditions of the Agreement and shall not be responsible for errors calculated to exist in a population of claim payments and net claim payments on the basis of a sample drawn from that population. Further, EBSO has the right to implement reasonable administrative practices in the administration of this Agreement. Minor deviations in claim payments and net claim payments from the provisions of the Agreement as a result of such reasonable administrative practices shall not be considered errors.

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

- K. EBSO and/or its appointed affiliate shall assist the Plan Sponsor, at the election of the Plan Sponsor, to prepare the Documents and amendments. The Plan Sponsor is responsible and liable for the timely preparation and filing of the Documents, and the Plan Administrator is responsible for the distribution of these Documents. If Plan Sponsor elects to prepare, or have a third party prepare, the Documents and/or amendments, the Plan Sponsor acknowledges and agrees that EBSO shall have no responsibility or liability in connection with such Documents or amendments.
- L. EBSO shall provide the Plan Administrator with such information as is in its custody for use by the Plan Administrator in the preparation of all tax returns and reports related to the Plan which are required by any federal or state agency, including the Internal Revenue Service and the Department of Labor. This information is contained in the monthly reports furnished by EBSO to the Employer to be used by the Employer in his roles as both the Plan Administrator and the Plan Sponsor.
- M. EBSO shall provide the Plan Sponsor and/or the Plan Administrator with "special reports" which are reasonably requested by either the Plan Sponsor or the Plan Administrator at a fee mutually agreed upon by the parties.
- N. EBSO shall provide the services of "EBSO-Review" at the Plan Administrator's election for the services outlined in the attached Fee Schedule.
- O. EBSO shall provide repricing of non-PPO claims through the services of outside vendors as indicated in the attached Fee Schedule.
- P. EBSO shall provide subrogation services through an outside vendor at the Plan Administrator's election as indicated in the attached Fee Schedule. If the Employer terminates this Agreement, the outside vendor has the right to determine which open cases to retain and work to conclusion and all such cases shall continue to be subject to the fees indicated in the attached Fee Schedule and the Disclosure Statement.
- Q. EBSO shall provide online access to eligibility, claims and documents at the Plan Administrator's election as indicated in the attached Fee Schedule. The Plan Administrator assumes all responsibility for maintaining hardcopy of eligibility information for the Plan's records and for any actions of the Plan Administrator and/or its employees in accessing or updating online eligibility information. If, for any reason, EBSO requires a copy of such records, EBSO shall contact the Plan Administrator.
- R. EBSO shall enroll the Employer and file a monthly report (if applicable) to any state in conjunction with mandated surcharges at the election of the Employer.
- S. EBSO shall incur no liability:
  - 1 if an excess loss provider terminates, cancels or modifies any insurance policy, or
  - 2 if an excess loss provider denies or fails to pay a claim under the policy.

Plan Sponsor shall hold harmless and indemnify EBSO for any claims arising from the termination, cancellation or modification of any excess loss policy or the denial or non-payment of excess loss claims.

- T. EBSO shall notify, by first class mail, all qualified beneficiaries who are eligible for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”) of their rights when they enroll in the Plan and upon Qualifying Events (as such term is defined in COBRA); provided, however, that the Plan Administrator specifically acknowledges that EBSO’s duties hereunder are contingent upon the Plan Administrator’s providing the notices set forth in Section II, Plan Administrator (N).
- U. Participants in the Plan will be instructed that payments for their contributions (if any) and COBRA premiums shall be by check, payable to the Plan Sponsor, and forwarded to EBSO. Upon receipt, EBSO will update the Plan Sponsor’s records and forward the participants’ checks to the Plan Sponsor. If EBSO receives a check from a participant made payable to EBSO, EBSO will endorse the check over to the Plan Sponsor, update the Plan Sponsor’s records, forward the check to the Plan Sponsor and notify the participant that all future checks should be payable to the Plan Sponsor.
- V. EBSO shall, upon reasonable notice, attend meetings, if requested by the Plan Sponsor or Plan Administrator, and in connection therewith, prepare any relevant information, provided that the Plan Sponsor shall reimburse EBSO for any costs incurred by EBSO for services that are not covered under the terms of this Agreement, including personnel costs.
- W. EBSO shall maintain copies of the Documents, insurance policies and all other basic documents relating to the Plan and this Agreement, as well as all claim forms, correspondence and communications with the Plan Sponsor, Plan Administrator and participants in the Plan.

## **II DUTIES OF THE EMPLOYER**

### **Plan Sponsor:**

Upon execution of this Agreement, Employer in its capacity as Plan Sponsor shall be responsible for the following activities:

- A. Plan Sponsor shall have exclusive authority to establish, amend and terminate the Plan.
- B. Plan Sponsor shall adequately fund the Plan in such a way that all claims and expenses of the Plan shall be paid in a timely manner which shall not exceed two (2) business days from the date notified by EBSO. In the event the Plan Sponsor fails to provide funds for payment of claims within thirty (30) days of receipt of notice of liability from EBSO, the Plan Sponsor acknowledges that EBSO may notify Plan participants and the U.S. Department of Labor of the Plan Sponsor’s inability to fund processed claims. In the event that a delay in funding by the Plan Sponsor causes any discounts to be no longer available, the Plan Sponsor agrees that EBSO shall have no liability with respect thereto.
- C. If Plan Sponsor directs EBSO in writing to pay a claim not covered by the terms of the Plan, it is understood that the claim shall be paid outside all terms of such Plan and will require the completion of an authorization form signed by a Plan fiduciary, and the authorization to pay such a claim is hereby deemed to release EBSO from any liability in connection therewith. The Plan Sponsor hereby acknowledges that such payments will not qualify for credit toward excess loss insurance coverage, if any, and further assumes all legal responsibilities for such payments.
- D. Plan Sponsor shall execute all contracts and agreements with any excess loss insurers.
- E. Plan Sponsor shall pay premiums for excess loss insurance in a timely manner. Plan Sponsor shall hold harmless and indemnify EBSO from any claims resulting from Plan Sponsor’s failure to timely remit funding to cover billings for excess loss insurance. If Plan Sponsor fails to provide funds for payment of premiums within thirty (30) days of their due date, EBSO may notify Plan participants and the U.S. Department of Labor of the Plan Sponsor’s inability to pay such premiums.
- F. Plan Sponsor and/or its appointed representative shall be ultimately responsible for the timely preparation and filing of the Documents and any amendments. It is understood and agreed that it is the sole responsibility of Plan Sponsor to notify EBSO as to any changes in its procedures, amendments, limitations, effective dates, special provisions, etc. of the Plan. Plan Sponsor shall hold harmless and indemnify EBSO and/or its appointed affiliate from any claims made or liability incurred as a result of the Plan Sponsor’s failure to make proper and adequate notification of such matters.
- G. Plan Sponsor shall be responsible for paying all taxes with respect to any tax imposed on the Plan or the Employer by the federal or state government or any other political subdivision.

H. Plan Sponsor shall make full payment of EBSO's invoices on or before the specified due date.

**Plan Administrator:**

Upon execution of this Agreement, Employer in its capacity as Plan Administrator or Trustee shall be responsible for the following activities:

A. Plan Administrator shall, in accordance with the terms of the Plan, determine which employees and/or dependents are eligible for participation in the Plan, shall provide this information to EBSO in a timely manner not to exceed thirty (30) days and shall notify the employee of his or her eligibility. Eligibility verification is deemed to be confirmation that the employee on whom a claim is based (or that employee's dependent) was or was not within an eligible employee (or dependent) class at the time services were rendered, such that whatever benefits, if any, are due and payable under the terms of the Documents can be adjudicated accordingly.

The information provided to EBSO by Plan Administrator shall include the full names, current addresses, social security numbers, birth dates, dates of hire, compensation (if applicable), dependent information and current account balances (if applicable), for all Plan participants. EBSO shall assume that all such information is complete and accurate and is under no obligation to question the completeness or accuracy of such information.

Plan Administrator shall also cause to be furnished to EBSO such other information as may be reasonably be required for the proper administration of the Plan (including, but not limited to, Actively at Work Verification Forms necessary for filing reimburse claims). EBSO shall not be responsible for delay in the performance of this Agreement or any agreements and contracts with excess loss insurers, for which delay or non-performance is caused or contributed to by the failure of the Plan Administrator/Employer to furnish any eligibility information.

B. As participants become eligible, Plan Administrator shall deliver enrollment forms, notices, waiver forms, "evidence of good health" forms (if applicable) and any other similar forms if needed to participants and shall be responsible for obtaining the completed forms from participants as well as delivering the forms or an agreed upon electronic format to EBSO in a timely manner.

C. Plan Administrator shall deliver to and obtain from participants any forms showing the reason for the change of status of employment, dependents, compensation (if applicable), life amounts (if applicable), name, marriage, divorce, etc. and shall notify EBSO immediately in writing or in an agreed upon electronic format of the change of status or employment of any participant.

D. Plan Administrator shall notify EBSO immediately in writing or in an agreed upon electronic format of all new eligible employees, eligibility changes or terminated employees as well as any other change in status of Plan participants.

Plan Sponsor may not receive an adjustment of premium already paid or with respect to other factors, as a result of the eligibility, change in eligibility or termination of a Plan participant, unless reported by Plan Administrator to EBSO in writing within thirty (30) days of the event.

E. Plan Administrator shall maintain original and updated records of those employees who qualify for coverage, including full name, current address, social security number, date of birth, dependents and any other information requested by EBSO.

F. Plan Administrator shall provide EBSO with a complete census of eligible employees and enrolled participants ninety (90) days prior to renewal of this Agreement.

G. Plan Administrator and/or its appointed representative shall be ultimately responsible for the timely delivery of the Documents and amendments to participants. It is understood and agreed that it is the sole responsibility of Plan Administrator to notify all participants of the Plan as to any amendments, limitations, effective dates, special provisions, etc. of the Plan. Plan Sponsor shall hold harmless and indemnify EBSO and/or its appointed affiliate from any claims made or liability incurred as a result of the Plan Administrator's failure to make proper and adequate notification of such matters.

H. Plan Administrator shall timely prepare and file with the appropriate federal or state agency all forms and documents necessary to maintain the Plan as qualified under applicable law.

- I. Plan Administrator shall be responsible for meeting all reporting requirements to the federal or state government and for all notice and disclosure requirements to Plan participants, beneficiaries or dependents that are mandated by law in connection with the Plan.
- J. Plan Administrator shall be responsible for filing all tax returns with respect to any tax imposed on the Plan or the Employer by the federal or state government or any other political subdivision.
- K. Plan Administrator and/or its appointed attorney shall be responsible for maintaining the Plan in accordance with applicable law as set forth in Section III of this Agreement.
- L. Plan Administrator shall be responsible to review appeals within the time specified by the Department of Labor regulations (where applicable).
- M. Plan Administrator shall have final authority with respect to all claims determinations, including appeals, and operations of the Plan.
- N. Plan Administrator shall notify EBSO of all Qualified Beneficiaries (as such term is defined in COBRA) who are eligible for COBRA continuation coverage. Such notice will be provided to EBSO within thirty (30) days of the occurrence of a Qualifying Event (as such term is defined in COBRA) and shall include (i) the employee's name and complete mailing address; (ii) the Qualified Beneficiary's name, relationship to the employee and complete mailing address; (iii) the date of the Qualifying Event; (iv) an a complete description of the Qualifying Event. The parties agree that EBSO will provide services as set forth above to assist with COBRA administration, however the Plan Administrator shall remain solely responsible for COBRA compliance.
- O. Even if the Company has elected that EBSO will provide services as set forth above to assist with HIPAA administration, the Plan Administrator shall remain solely responsible for HIPAA compliance.

### **III PLAN DOCUMENT**

Plan Sponsor and/or its appointed attorney agrees to timely prepare and execute any amendments to the Plan which are required by law or are elective and to deliver any such Plan amendments to EBSO or its appointed affiliate promptly after adoption. EBSO or its appointed affiliate shall assist the Plan Sponsor in the preparation of Plan amendments at the election of the Plan Sponsor as set forth in Section I of this Agreement. However, Plan Sponsor and/or its appointed attorney shall be ultimately responsible for maintaining the Plan in accordance with applicable law.

Any modification or amendment of the Plan(s) shall be approved by excess loss insurer prior to its effective date and duly communicated in detail and in writing by the Employer to EBSO and to all eligible employees and dependents. Such communication shall set forth the effective date of the modification or amendment. EBSO shall have no liability for the refusal by any excess loss insurer to permit such amendment.

### **IV BANK ACCOUNT**

- A. Plan Sponsor represents and warrants that a bank checking account (Bank Account) has been established for the Plan.
- B. Plan Sponsor represents and warrants that it shall remit to the Bank Account an amount adequate to pay all claims and expenses of the Plan in a timely manner which shall not exceed two (2) business days from the date EBSO notifies Plan Sponsor that a claim is payable or expense due. EBSO shall not be liable for the payment of any claim under the Plan nor for the overdrafts on the account. EBSO shall have no liability to Employer, participants, dependents, beneficiaries or third parties if funds deposited by the Plan Sponsor are insufficient to pay any claim or expense under the Plan. EBSO shall pay claims for the Plan Sponsor with respect to the Plan only to the extent of funds made available to it by the Plan Sponsor or the Plan, and then only while so authorized by the Plan Sponsor.
- C. EBSO will make every reasonable effort to recover amounts paid by the Plan Sponsor during the term of this Agreement that were inconsistent with Plan provisions. EBSO shall not be liable for non-recovery of such payments, unless such payments arose from, or were otherwise attributable to, EBSO's gross negligence or willful misconduct.
- D. If Plan Sponsor fails to adequately fund within 30 days of the funding notice, EBSO may elect to terminate this Agreement effective immediately upon receipt by Employer of written notice of termination.

- E. EBSO shall disburse funds from the Bank Account for the purpose of satisfying covered benefits or claims, to pay the fees of EBSO set forth in this Agreement and to make such other payments or disbursements as are consistent with the terms of this Plan and Agreement.
- F. EBSO shall disburse funds for the purpose of satisfying covered benefits or claims on checks or drafts. Samples of such checks or drafts shall be included in the initial items distributed to the Plan Sponsor or at the time the Bank Account is established.
- G. EBSO shall furnish to Plan Sponsor on a monthly basis a summary of activity with respect to the Bank Account.

## **V ACCOUNTING BOOKS / CLOSING DATE / EXCESS LOSS INSURANCE DEDUCTIBLES**

- A. The monthly Closing Date of EBSO's accounting books shall be five (5) business days prior to the last calendar day of the month, unless EBSO notifies Employer otherwise.
- B. In the month in which Plan Sponsor's excess loss insurance contract expires:
  - 1 Plan Administrator must submit all claims to EBSO before 10:00 A.M. on the last business day prior to the Closing Date in order to allow EBSO sufficient time to process those claims and request funds prior to the Closing Date; and
  - 2 Plan Sponsor must have adequate funds posted in the Bank Account on the Closing Date for payment of claims submitted to EBSO on the last business day prior to the Closing Date as well as for all other claim checks which have not yet cleared the Bank Account.
  - 3 If the Plan Sponsor fails to comply with both section B1 and B2 above, claims submitted on the last business day prior to the Closing Date shall be subject to the new deductible in the amount specified in the renewed excess loss insurance contract and shall not count towards the current year excess loss insurance deductible.
  - 4 All claims received after 10:00 A.M. on the last business day prior to the Closing Date and all claims received on or after the Closing Date shall be subject to the new deductible in the amount specified in the renewed excess loss insurance contract and shall not count towards the current year excess loss insurance deductible.

## **VI RECORD KEEPING**

- A. Where required by law, EBSO and Plan Administrator shall each retain at their principal administrative office as part of their official records, for the duration of this Agreement and for a period of seven (7) years after its termination, or for the period specified by state law if longer than seven (7) years, the following documents and records: Plan Documents, excess loss insurance contracts and monthly reports. It is recognized that such documents and records may contain 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 pursuant to HIPAA. The Plan Administrator and EBSO agree to handle such PHI in compliance with the Privacy Standards and in accordance with the Business Associate Agreement entered into between the Plan and EBSO.
- B. In the event this Agreement is terminated because Employer has hired a TPA or Insurance Company to replace EBSO, the Plan Administrator must request in writing that EBSO release and transfer all documents, records and forms pertaining to performance of services under this Agreement to the custody of the new TPA or Insurance Company. EBSO shall be under no duty to maintain its own copies of the documents and records specified in VI A above in the event Plan Administrator requests such termination and transfer. EBSO shall send files C.O.D. to the Plan Administrator upon termination of services or the Plan Administrator may make arrangements to pick-up the files. Claims must be maintained by the Plan Administrator for a period of 7 years from the date paid. Notwithstanding the foregoing, if EBSO deems it infeasible to release and transfer any documents, records and forms pertaining to performance under this Agreement, to the extent such documents, records and forms contain PHI, EBSO agrees to handle such PHI in compliance with the Privacy Standards and in accordance with the Business Associate Agreement entered into between the Plan and EBSO.

## **VII ADDITIONAL PROFESSIONALS**

EBSO may retain the services of accountants, attorneys, actuaries and other professionals whose services are reasonably necessary or desirable to aid in the performance of the duties required of EBSO under this Agreement for the benefit of Plan

Administrator and the Plan at the expense of the Plan Sponsor. EBSO shall notify Plan Administrator of any pending matter which requires the retention of any such professionals and shall refrain from hiring any such persons for the performance of substantial services without the prior written approval of Plan Administrator.

EBSO may obtain professional reviews, independent medical evaluations, and audits of hospital or other health care provider costs, expenses and credit balances in accordance with group health industry standards and practices to determine whether hospital and physician charges are accurate, appropriate and necessary. The Plan Sponsor shall be responsible for all fees or expenses, if any of third parties in connection with such audits.

EBSO may retain the services of medical, vocational, and dental professionals and/or consulting attorneys whose services are reasonably necessary or desirable to aid in the determination of whether benefits are payable under the Plan at the expense of the Plan Sponsor. EBSO shall notify Plan Administrator of any pending matter which requires the retention of any such professionals or consulting attorneys whose fees will be paid by Plan Sponsor.

## **VIII LIABILITY AND RELEASE OF CLAIMS**

EBSO shall have no responsibility for, nor shall it incur any liability in connection with, either reporting requirements to the federal or any state government or disclosure requirements to Plan participants, beneficiaries and/or dependents, that are mandated by law in connection with the Plan.

Plan Sponsor agrees to hold EBSO harmless, and expressly releases all claims against EBSO, relative to any act, or failure to act, by EBSO as a result of, and in reliance on, information provided to EBSO by the Employer. EBSO will be liable for its acts and omissions with regard to its failure to comply with the terms of this Agreement.

In the absence of such failure to comply with the terms of this Agreement, Plan Sponsor shall indemnify and hold harmless EBSO from any liability for acts or omissions and for any damages or expenses EBSO may incur in connection with its duties under this Agreement, except for those committed through EBSO's negligence or fraud.

## **IX WAIVER**

The failure of any party to this Agreement to object to, or to take affirmative action with respect to, any conduct of the other that is in violation of the terms of this Agreement shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

## **X TAXES**

With respect to any tax imposed on the Plan or Employer, EBSO shall have no responsibility for filing any tax return with, or paying or collecting any tax due to, the federal or any state government or any other political subdivision.

## **XI FIDUCIARY CAPACITIES AND ACKNOWLEDGMENT OF RESPONSIBILITIES**

The parties explicitly agree and affirm that the Employer is the "Administrator," "Named Fiduciary," and "Plan Sponsor" of the Plan, and the Plan Administrator is the fiduciary of the Plan and affirms its full liability for acts or omissions committed by it with respect to the administration of the Plan. Employer in its several capacities agrees and affirms that EBSO merely assists it in the claims administration of the Plan, but EBSO has no discretionary authority or discretionary control in making decisions about plan administration, payment or non-payment of claims, or any other determination with respect to the Plan or the participants' rights in the Plan; EBSO renders no investment advice with respect to any money or other property of the Plan and has no authority or responsibility to do so. To the extent discretion must be used in making any decision regarding a claim, EBSO shall refer the claim to the Plan Administrator, who shall have the sole authority to make discretionary decisions with respect to the Plan. EBSO is not a fiduciary of the Plan as that term is used under ERISA or otherwise and has no fiduciary responsibility with respect to the Plan. The Plan Sponsor acknowledges that it has exclusive responsibility for the design and funding of the Plan. This provision may be disclosed by EBSO in any communication, whether oral or written, including, without limitation, periodic statements to the Plan Sponsor, the Plan Administrator, or the Plan participants.

## **XII INDEMNIFICATION**

The Plan Sponsor hereby agrees to defend, indemnify and hold EBSO harmless against all expenses, losses, claims, damages, liabilities, reasonable attorneys' fees and costs of suit in connection with any claim, action, suit, proceeding, settlement or compromise thereof, concerning the plan or this agreement, including, but not limited to:

- A. any negligent or other tortious or criminal conduct of the employer, its officers, agents, representatives, or employees;
- B. any claim for benefits under the Plan;
- C. any breach of this agreement by employer;
- D. any liability relating to possession or maintenance of any Plan records following termination of this agreement, provided EBSO has complied with its business associate agreement with the Plan and with the privacy standards;
- E. any action of, or services provided by, the providers (as defined herein) or the broker (as defined herein), including, but not limited to, any services of third parties or excess loss insurance coverage that are recommended or obtained by the broker, and any actions of the broker and/or its employees in responding to service calls from Plan participants or from any provider of services/supplies to the Plan;
- F. any actions taken by the Plan Administrator, its employees or representatives, or the broker and/or its employees, in accessing the Plan's records or files (whether to update eligibility information, process claims or perform some other function), or the results of such access;
- G. any misuse of prescription drug cards following a participant's termination;
- H. any claim relating to a delay in funding by the Plan Sponsor that causes any discounts to be lost or rescinded. This includes failure or delay in funding which results in the loss of any prompt pay discount;
- I. any liability relating to a Plan Document, summary plan description or amendment prepared by a third party;
- J. if the parties agree that EBSO will process run-in claims prior to completion of the Documents pursuant to section i, recurring administrative services, (C)(2), any claim relating to (i) denial of eligibility or payment or non-payment of claims based upon a prior plan document or the Plan Sponsor's instructions, (ii) the denial of any excess loss insurance claim arising as a result of the payment or non-payment of the claims or the denial of eligibility based upon the foregoing, and (iii) the rendering of services by EBSO prior to completion and execution of the Documents; and
- K. any liability relating to use of on-line enrollment services.

The right to be defended, indemnified and held harmless hereunder shall extend to the employees of EBSO, their heirs, personal representatives and assigns, and shall also apply to an employee, after an employee ceases employment with EBSO, but only with respect to acts or omissions prior to such cessation. The employer immediately shall notify EBSO of any lawsuits or actions, or any threat thereof, that may become known to the employer that might adversely affect any interest of EBSO.

If EBSO is named in any legal action or governmental agency investigation regarding the employer, the plan or EBSO's services under this agreement, EBSO shall have the right to select the attorney or firm to represent its interest in any such proceedings. EBSO shall invoice the Plan Sponsor for all legal fees, costs, and expenses incurred in the defense of any such proceeding, and the Plan Sponsor agrees to pay or reimburse EBSO for any such invoice within thirty (30) days.

EBSO agrees to defend, indemnify and hold the Plan Sponsor harmless against all expenses, losses, claims, damages, liabilities, reasonable attorneys' fees and costs of suit in connection with any claim, action, suit, proceeding, settlement or compromise thereof, to the extent such claim, action, suit, proceeding, settlement or compromise results directly from EBSO's failure to comply with this agreement. Notwithstanding the foregoing, the amount that EBSO will pay over to, or indemnify, the Plan Sponsor will be capped at the amount of the total fees (as detailed on the fee schedule attached hereto) received by EBSO from the Plan Sponsor for the twelve-month period prior to such claim pursuant to this agreement.

### **XIII FIDELITY BOND COVERAGE**

EBSO shall be covered by fidelity bond insurance in an amount equal to or greater than required by applicable federal or state law.

### **XIV GOVERNING LAW**

This Agreement is to be governed by, and construed according to, the laws of the State of Wisconsin, without regard to its conflicts of laws provisions, to the extent ERISA, Arizona State Law, or the Internal Revenue Code (the Code) do not apply. If any provision of the Agreement is held to be invalid by any court of competent jurisdiction, such finding shall not invalidate the remainder of the Agreement. The parties agree that any action to enforce this Agreement shall be brought and maintained in Milwaukee County, Wisconsin to the extent ERISA and the Code do not apply. If any legal action shall be instituted with respect to a breach of any of the provisions of this Agreement and such a breach shall be held to have occurred, then the prevailing party shall be entitled to recover all expenses incurred in connection with such action, including reasonable attorneys' fees, through any appeal.

## **XV OTHER PROVIDERS/BROKER**

The Plan Administrator has elected to utilize the services of certain other providers (the "Providers") in connection with the administration of the Plan and authorizes EBSO to enter into agreements on its behalf with the Providers. The Providers will bill the Plan Sponsor directly for its fees. The Plan Sponsor acknowledges and agrees to the payment terms of any Provider utilized by the Plan.

The Plan Sponsor has used the services of Susan Posada Agency (the "Broker") in connection with the Plan.

The Plan Sponsor acknowledges that EBSO has no ownership or affiliation with the Providers or the Broker, except as set forth below, other than the right to access their networks or services. The Plan Sponsor further acknowledges that EBSO may receive compensation from certain Providers for providing support to them in connection with the services they provide to the Plan.

	<b><u>Provider Name</u></b>	<b><u>Provider Fee</u></b>
1.	Out-of-Network Claim Program – EBSO utilizes outside vendors for out-of-network	N/A
2.	Subrogation Vendor	25% of the Net Recovery or 33.33% if legal action required
3.	Bank Charges	As appear on the Bank Statement
4.	PPO Access Fee BCBS of Arizona PPO Access Fee Siarmed Secondary PPO Multiplan wrap (US only)	\$16.00 per employee per month \$ 4.25 per employee per month 25% of Savings
5.	Large Claim Negotiation Vendor Fee	30% of Savings
6.	Language Line (translation for non-English Language speaking employees)	Actual monthly cost billed by Line
7.	Healthiest You	\$8.00 per employee per month

## **XVI TERMINATION OF AGREEMENT**

Either party may terminate this Agreement thirty (30) days following delivery of written notice of such termination to the address set forth in Section XXVII. The termination date must be the end of a calendar month. The fifteen (15) day written notice permitted by Section XXVII of this Agreement and the immediate termination provided by Section IV of this Agreement, shall be the only exceptions to this thirty (30) day written notice rule. Upon termination, EBSO shall have no further responsibility to Employer except to provide to Plan Administrator all pertinent information from its files related to its services under this Agreement prior to termination, including unprocessed applications, claim files and enrollment forms, which shall be released after receipt by EBSO of all outstanding fees or, in the case of a dispute, upon resolution of any fees in dispute; provided, however, that EBSO shall be permitted to retain certain information from its files related to its services under this Agreement as permitted by the Privacy Standards if the return of that information to the Plan Administrator is infeasible. Plan Administrator shall request in writing that EBSO transfer documents, records and forms as set forth in Section VI B, if the services of a new TPA or Insurance Company to replace EBSO have been contracted for by Employer. Notwithstanding the foregoing, if EBSO deems it infeasible to release and transfer any documents, records and forms pertaining to its performance under this Agreement to the newly retained TPA, to the extent such documents, records and forms contain PHI, EBSO agrees to handle such PHI in compliance with the Privacy Standards and in accordance with the Business Associate Agreement entered into between the Plan and EBSO.

Upon termination, EBSO shall supply, upon written request, standard and/or special reports, at the fee rate as stated in the Fee Schedule, provided that EBSO has received final payment from Plan Sponsor for all services according to the terms of this Agreement.

## **XVII TERM OF SERVICE AGREEMENT**

The initial term of this Agreement shall be one (1) year, beginning on July 1, 2018 (the "Effective Date") and terminating on July 1, 2019. The Effective Date may not be more than fifteen (15) days prior to the receipt of this Agreement by EBSO. This Agreement shall automatically be renewed for successive one (1) year periods if neither party provides written notice to the other party, of modification or termination at least thirty (30) days prior to the expiration of the then current term of service.

EBSO shall have the right to require renewal(s) to be subject to acceptance of renewal terms by Employer. EBSO shall present any renewal terms to Employer no less than thirty (30) days prior to the date the Agreement is to expire. If Employer elects not to renew this Agreement after receipt of the renewal terms, written notice of intention to terminate must be delivered to EBSO not more than fifteen (15) days following receipt of the renewal terms. Termination will be effective at the natural expiration date of this Agreement.

This Agreement cancels and supersedes all prior contracts, Agreements and negotiations entered into by the parties.

## **XVIII COMPENSATION**

EBSO shall be paid as compensation for its services in the amount(s) set forth in the attached Fee Schedule. EBSO shall disburse to itself amounts equal to its fees from the Bank Account on a monthly basis.

## **XIX AUDIT RIGHTS**

The Employer may inspect any COBRA Compliance transactions, procedures, records and COBRA participant files maintained by EBSO relating to the Employer's employees or dependents, subject to ten (10) days written notice to EBSO.

## **XX SPECIAL PROVISION FOR CLIENTS WITH INDIANA RESIDENTS**

The Commissioner of Insurance is entitled to inspect all books and records of EBSO for the purpose of examinations and audits. Trade secrets contained within those books and records, including the identity and addresses of policyholders and certificate holders, are to remain confidential. However, the commissioner may use that confidential information in proceedings instituted against EBSO.

Any insurer, employer, employee group using the services of the administrator is entitled to inspect the books and records of EBSO to the extent necessary for it to fulfill all of its contractual obligations to insured or covered Plan Members. The right of the insurer, employer, employee group, or other group using the services of EBSO is subject to any restrictions contained in this Agreement.

## **XXI PROPRIETARY INFORMATION AND OWNERSHIP RIGHTS**

The Employer acknowledges that it shall have no title or ownership rights to any of the products or material relating to EBSO delivered to the Employer in conjunction with this Agreement, including, but not limited to, EBSO's proprietary computer software, records, reports, forms, documents and business methods. The Employer shall not license, market, copy, modify, sell, transfer or disclose any of such products or materials, in whole or in part. It is expressly understood and agreed that such products and materials are proprietary to EBSO and shall remain the sole property of EBSO at all times. The Employer acknowledges and recognizes that any breach of this paragraph may result in irreparable harm to EBSO by reason of such breach and EBSO shall be entitled to equitable relief (including, without limitation, specific performance and injunctive relief) to enjoin the occurrence and continuation of such breach, and that such equitable relief shall be in addition to, and not in lieu of, all other remedies available to EBSO.

EBSO acknowledges that all records and files maintained by it with regard to the Plan are the property of the Plan Sponsor to the extent permissible under the Privacy Standards; otherwise such records and files are the property of the Plan Administrator. In the event the Employer, as the Plan Administrator, or its employees, or the Broker or the Broker's employees, accesses the Plan's records or files, whether to update eligibility information, process claims or perform some other function, the Employer acknowledges and agrees that EBSO shall have no responsibility or liability in connection with any actions taken by the Employer or its employees, or the Broker or the Broker's employees, or the results thereof.

**XXII AMENDMENTS AND MODIFICATIONS**

This Agreement represents the entire agreement between the parties relating to the subject matter hereof. No change, addition, or erasure of any portion of this Agreement shall be valid or binding upon either party unless mutually agreed upon in writing. There are no oral or other agreements or understandings between the parties affecting this Agreement, or related to the services provided by EBSO to the Employer under this Agreement. This Agreement supersedes all previous agreements between the parties.

**XXIII FEE SCHEDULE AND DISCLOSURE STATEMENT:**

The attached Fee Schedule and Disclosure Statement referred to in this Agreement are incorporated into and made part of this Agreement.

**XXIV PRESCRIPTION DRUG CARDS**

In the event the Plan includes prescription drug benefits and participants in the Plan are issued cards in connection with those benefits, the Plan Administrator acknowledges and agrees that it is responsible for collecting such cards when a participant's coverage under the Plan terminates, that it is liable for any misuse of such cards following a participant's termination and that EBSO has no liability in connection therewith.

**XXV LARGE CLAIM NEGOTIATION**

EBSO shall have the authorization to negotiate all claims in excess of \$25,000. Accordingly, EBSO staff will review selected bills to determine if charges are appropriate for the condition, billing is correct and if charges are reasonable. Using this information, negotiators will then contact the facility and/or physician to negotiate a settlement agreement that will be signed by the facility prior to payment of the claim. By obtaining up-front sign-off, it guarantees no appeal from the hospital post payment.

**XXVI ASSIGNMENT**

Neither party may assign its rights or obligations hereunder without the prior written consent of the other.

**XXVII 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 the address set forth below, or at such other addresses as the parties may from time to time designate in writing.

If to EBSO, to:  
7020 North Port Washington Road, Suite 206  
Glendale, WI 53217  
Attn: Bruce Flunker

If to Employer, to:  
1090 East Union Street  
San Luis, AZ 85349  
Attn: Olivia Jenkins

**XXVIII BINDING EFFECT**

This Agreement shall be binding upon the parties hereto and their successors and assigns.

**XXIX ACKNOWLEDGMENT**

The undersigned is an independent fiduciary with respect to the Plan referenced on the first page of this Agreement. I hereby acknowledge receipt of this Agreement and plan Disclosure Notice and the opportunity to examine it prior to entering into any contract(s) for the services and/or policies described in this Agreement and Disclosure Notice. I am authorized to act on behalf of the Plan, and I hereby approve the transaction(s) on the Plan's behalf.

IN WITNESS WHEREOF, the Employer has executed this Agreement on the day and year first written below.

Accepted by: \_\_\_\_\_  
Client Signature Title Date

\_\_\_\_\_  
EBSO Signature Title Date

Client Name: **City of San Luis Employee Benefit Trust**

**FEE SCHEDULE**  
**City of San Luis Employee Benefit Trust**  
**Effective July 1, 2018**

**Liaison Fees:**

- |    |                   |                                |
|----|-------------------|--------------------------------|
| 1. | Agent/Broker Fees | \$35.00 per employee per month |
| 2. | EBSO              | \$1,750 (Annual)               |

**Set-up Fees:**

- |    |                       |                       |
|----|-----------------------|-----------------------|
| 1. | Plan Document Set-up  | N/A                   |
| 2. | Booklets and ID Cards | Actual Printing Costs |

**EBSO Administration Fees:**

- |    |                                     |   |
|----|-------------------------------------|---|
| 1. | Administration Fee for Medical Plan | \$24.50 per employee per month  |
| 2. | Administration Fee for Dental Plan  | \$3.00 per employee per month<br>(Minimum \$500.00)   |
| 3. | Surcharge Administration            | Included in Administration Fee  |
| 4. | Run-In Fees                         | \$17,000 billed over 3 months<br>(July \$5,666, August \$5,667 & September \$5,667)                                   |
| 5. | Run-Off Administration Fees         | 6 months of current administration fees (based on last month's enrollment in contract year) for 12 Months of run out. |
| 6. | COBRA Administration Services       | Included in Administration Fee  |
| 7. | ID Cards                            | \$1.50 each   |
| 8. | ACA 1094/95 Reporting               | \$3.00 per employee per month   |
| 9. | SBC Fee                             | Included in Administration Fee  |

**EBSO-Review Administrative Fees:**

- |    |                  |   |
|----|------------------|---|
| 1. | Inpatient Review | Included in Administration Fee  |
| 2. | Case Management  | \$107.00 per hour and Authorization on a Case by Case Basis for US only |

**Other EBSO Fees:**

- |    |  |
|----|--|
| 1. | Reprocessing Fee. In the event a retroactive amendment or the Plan Sponsor's failure to fund claims in a timely manner results in the need to reprocess claims, the Plan Sponsor agrees to pay EBSO's expenses in performing that service. |
|----|--|

2. **Other Expenses.** For any other expenses incurred in connection with assisting the Plan Administrator in administration of the Plan, EBSO agrees to bill such expenses, limited to the actual cost to EBSO, and agrees to allow the Plan Sponsor access to records of said costs.
3. **Shared Savings.** In the event a Plan participant incurs medical expenses that are not eligible for a discount under the Plan's primary preferred provider or secondary preferred provider (if any), or under any other discount arrangement, EBSO is hereby authorized to negotiate with the provider of services or supplies for a discount or, at its discretion, to use the services of a third party to obtain a discount.
4. **Increased Postal Fees.** Notwithstanding the fees in effect under this Agreement, should the U.S. postal service institute a postal rate increase during the term of this Agreement, then EBSO shall increase the fees then in effect to cover such increased costs.
5. **Plan Amendments.** EBSO shall have the right to change its fees upon written notice to the Plan Sponsor if any amendment to the Plan changes the amount or type of processing, services or responsibilities undertaken by EBSO, effective as of the effective date of the amendment.
6. **Changes in Law Resulting in Increased Costs.** Notwithstanding the fees in effect under this Agreement, should there be a change in any law or regulation that results in increased costs to EBSO, EBSO shall increase its fees to cover such increased costs.

**Other Provider Fees:**

- |    |   |   |
|----|---|---|
| 1. | Out-of-Network Claim Program –<br>EBSO utilizes outside vendors for out-of-network  | N/A   |
| 2. | Subrogation Vendor  | 25% of the Net Recovery or 33.33% if legal action required.                       |
| 3. | Bank Charges  | As appear on the Bank Statement   |
| 4. | PPO Access Fee BCBS of Arizona<br>PPO Access Fee Siarmed (Includes Med/Dental)<br>Secondary PPO Access Fee Multiplan wrap (US only) | \$16.00 per employee per month<br>\$4.25 per employee per month<br>25% of Savings |
| 5. | Large Claim Negotiation Vendor Fee  | 30% of Savings  |
| 6. | Healthiest You  | \$8.00 per employee per month   |
| 7. | Language Line (translation for non-English speaking employees)  | Actual monthly cost billed by Language Line                                       |

**Reports upon Termination of Contract/Services:**

Standard package \$2,500.00 Additional reports that would require programming by IT Dept. would be \$150.00 per hour.

When Excess Loss Insurance is placed by the broker and not EBSO, EBSO will not be held liable for discrepancies between the Excess Loss contract and the Plan Document.

## DISCLOSURE STATEMENT

The Department of Labor and the Internal Revenue Service require that certain disclosures be made to the Employer of an employee benefit plan before the plan purchases any insurance policy or enters into other contracts. This notice is intended to comply with the disclosure requirements of applicable laws and regulations.

The undersigned Employer agrees to hold in confidence the information provided below.

A. Description of Transactions:

1. Left Lane, Inc. is an insurance agency through which your insurance broker proposes to place excess loss policies on behalf of the employee benefit plan named on the first page of this Agreement. Left Lane, Inc. may be eligible for incentive programs, including trips, overrides and profit sharing.
2. EBSO is a third party administrator which provides or proposes to provide third party claims administration services to the Plan. EBSO and the Plan propose to enter into, or have entered into and propose to renew, an administrative services agreement with respect to the services to be provided by EBSO to the Plan.

B. Administrative Allowances and Commissions:

1. Fees received from claim negotiation services are split 50% to vendor and 50% to EBSO.
2. The subrogation vendor provides EBSO an administrative allowance to defer costs of administering their subrogation program. Fees received from subrogation services are standardly split one third EBSO, two thirds subrogation vendor. Pursuant to the Subrogation Service Agreement, Employer hereby authorizes Subrogation Vendor to compromise, adjust, settle or otherwise dispose of liens and other claims in any manner authorized by law and in the best interest of the Client except that Subrogation Vendor shall notify and receive Plan approval prior to entering into any settlement or finalizing any recovery representing less than 85% of the total due. In the event a case has a lien amount under \$2,500, then Subrogation Vendor shall have complete authority to settle said lien.
3. The Pharmacy Benefit Manager (PBM) provides EBSO a commission per claim for providing electronic eligibility interface or share in the rebates paid by the PBM vendor.
4. 

<b>Excess Loss:</b> Symetra Financial	
Policy Number: TBD	Expected Annual Premium \$482,023
Commission Rate	
Left Lane, Inc.	Net
Broker	Net