

Winston Financial Services, Inc. - Master Services Agreement

This Master Services Agreement (hereinafter referred to as the "MSA"), made this January 5, 2016 is by and between Williamson County, an Texas corporation ("Customer") having its principal place of business at 710 S. Main Street, Georgetown, Texas 78627, and Winston Financial Services, Inc., located at 2399 Highway 34, Suite C2, Manasquan, NJ 08736 (hereinafter referred to as "Winston").

This MSA and the one or more attached Appendices and Statements of Work (each an "SOW"), each fully incorporated herein; together comprise the complete agreement between the parties ("Agreement") regarding those Services to be provided hereunder.

In consideration of the mutual promises contained in this Agreement, Customer and Winston agree as follows.

1. Nature and Scope of Services.

We shall provide the Services described in each SOW upon the terms and conditions specified in this MSA and the applicable SOW. Specifications and additional applicable terms shall be set forth in the SOW for the Services.

Notwithstanding any provision of this Agreement, we do not assume any responsibility for (i) the general design of any Plan or Program, (ii) the adequacy of the Plan or Program funding, or (iii) any act or omission or breach of duty by Customer, nor are we in any way to be deemed an insurer, underwriter, or guarantor with respect to any benefits under a Plan or Program. Nothing in this Agreement shall be deemed to impose upon us any obligation to any employee of Customer or any person who is participating in a Plan or Program ("Participant").

WINSTON IS NOT AN ADMINISTRATOR, PLAN ADMINISTRATOR OR FIDUCIARY AS DEFINED UNDER ERISA. The Customer acknowledges, agrees and warrants that the Customer is the named administrator, plan administrator and/or fiduciary within the meaning of ERISA for any and all of Customer's Plan or Programs, as applicable, and, notwithstanding anything to the contrary contained herein, we are not a fiduciary nor do we have any discretionary authority with respect to nor control over such Plan or Programs, or any plan assets relating to same. It is understood and agreed that Customer and/or the relevant Plan or Programs have full and final authority and responsibility for the Plan, Programs, plan assets, and operation of same including without limitation, the authority and responsibility for administering, construing and interpreting the provisions of the Plan and the Programs and making all determinations and exercising all discretion there under, responsibility for the benefits structure of the Plan and Programs, claims and appeals decisions, cost containment Program decisions, utilization benefits management, compliance with the requirements of COBRA, compliance with the reporting and disclosure requirements of ERISA, compliance with the requirements of HIPAA, and compliance with any other state and federal law or regulation applicable to the Customer, the Plan or the Programs. We shall not have any duty or power to act on behalf of Customer or any participant or beneficiary in connection with such Plan or Programs other than as expressly stated in this Agreement or upon instruction and direction from the Customer. All final determinations as to a Participant's entitlement to coverage or benefits under the Plan or a Program are to be made by Customer, including any determination upon appeal of a denied claim for Program benefits, unless such determination is to be made by the applicable insurance carrier pursuant to the terms of the Plan or Program.

The Customer shall provide any and all necessary and appropriate instruction with respect to Services set forth in any SOW hereunder regarding the Customer's operation of the Plan or Programs. Winston shall exclusively rely on instruction from the Customer with respect to the operation of such Plan or Programs and shall be entitled to conclusively rely on any written communication received from the Customer, which it reasonably believes to be genuine and signed by a person with apparent authority to issue such a communication. Winston shall then be under no duty to make an investigation or inquiry as to the truth, accuracy, or completeness of any statement or information contained therein.

Customer acknowledges that we are not providing tax or legal advice and that Customer shall be solely responsible for determining the legal and tax status of the Program and the Plan. Winston does not accept any fiduciary or trust responsibilities in connection with the performance of the Services except to the extent required by applicable law.

2. Information From Customer

Customer agrees to and is responsible to promptly provide us with all information we reasonably require to perform the Services hereunder, including without limitation the Plan and Program documents and any Plan or Program amendments, all necessary Plan

information, rates, eligibility rules, exceptions, grand-fathering rules, class distinctions, elimination periods, waiting periods, contributions, census reports, enrollment materials, forms, and booklets. Such information shall be provided in such format, electronic or otherwise, as may be requested by us to perform the Services. Customer shall notify us of any changes to the Plan or Program at least thirty (30) days before the effective date of such changes.

Customer shall be responsible for ensuring the accuracy of its census/eligibility and other files and information provided and shall be solely responsible for any inaccuracies contained therein, except for files modified by us. We shall have no liability to Customer or any Participant as a consequence of an inaccurate file except for files materially modified by us, and we shall not have any obligation as a consequence of Customer failing to review any census/eligibility file for accuracy. Winston shall assume that all such information is complete and accurate and is under no duty to question the completeness or accuracy of such information.

3. Billing and Payment Terms.

Pricing and Compensation. Customer agrees to pay the fees and/or make appointments as specified in each Statement of Service as payment for corresponding Services.

Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date The County receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by The County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of The County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

Taxes. Prices are exclusive of all sales, use and similar taxes. Customer is responsible for paying the amount of any applicable sales, use or service tax, fees or charges for Services delivered and invoiced to Customer (except for any franchise tax, withholding tax or any tax imposed on Winston's net income), which Winston may be required to collect because of its performance of this Agreement.

Invoices. Customer will be invoiced monthly and pay the agreed upon fee to Winston within 30 business days of the date of the invoice. We may accept any payment without prejudice to our right to recover any remaining balance or to pursue any other remedy available to us.

Payment Dispute: You must notify us of any dispute concerning any payment within 30 business days after receipt of the invoice. Winston and Customer will use their good faith efforts to resolve any disputed fee amount or refusal of payment. We may, in addition to asserting any of our other rights, suspend any further services if your non-payment continues beyond 60 business days.

4. Term and Termination.

This Agreement shall become effective on the Effective Date and shall continue in effect until terminated as specified in this Section ("Term"), subject to any effective date provision in an SOW.

Initial Term shall commence on January 5, 2016 and terminate on January 4, 2019. The agreement shall automatically renew for additional one (1) year terms, and may be terminated by Williamson County upon at least sixty (60) days written notice to Winston prior to the expiration of annual term of its intent not to renew.

Automatic Termination. This Agreement shall automatically terminate as of the earliest of the following: (1) the effective date of any legislation which makes this Agreement illegal; (2) the date Customer becomes insolvent, or bankrupt, or subject to liquidation, receivership, or conservatorship; or (3) the termination date of the Plan and the Programs, subject to any agreement between Customer and Winston regarding payment of benefits after such Plan or Programs are terminated.

Optional Termination. This Agreement may be terminated as of the earliest of the following: (1) by Winston upon the failure of Customer to pay any undisputed charges within sixty (60) business days after written notice to Customer; (2) by Winston upon the failure of Customer to perform its obligations in accordance with this Agreement other than payment of fees for Services which failure has not been cured within 60 days of notice to Customer by Winston of such failure or substantial steps taken towards the cure and diligently pursued; (3) by Customer upon the failure of Winston to perform its obligations in accordance with this Agreement which failure has not been cured within 30 days of notice to Winston by Customer of such failure; or at any time at the option of either party, without future or prospective liability for performance upon giving one hundred twenty (120) days written notice thereof. In the event of termination, Customer will only be liable for its pro rata share of services rendered and goods actually received.

Limited Continuation After Termination. If this Agreement is terminated, Customer and Winston may mutually agree in writing that this Agreement shall continue for the sole purpose of providing certain Services with respect to certain payment of any Plan or Program benefits, expenses, or claims incurred prior to the date of Program such termination. In addition, if this Agreement is terminated while a Program continues in effect, Customer and Winston may mutually agree in writing that this Agreement shall continue for the purpose of payment of any claims for which requests for reimbursements have been received by Winston before the date of such termination. If this Agreement is continued in accordance with this subsection, Customer shall pay the Service Fee incurred during the period that this Agreement is so continued and a final termination fee equal to the final month's Service Fee.

Damages for wrongful termination. In the event this Agreement is terminated by Customer for any reason other than as set forth in this Section, Customer shall pay Winston within 30 days of the date of such termination an amount equal to the sum of any Service Fees unpaid as of the date of such termination.

Survival of Certain Provisions. Termination of this Agreement shall not terminate the rights or obligations of either party arising out of a period prior to such termination. The indemnity, confidentiality, privacy, and security provisions of this Agreement shall survive its termination.

5. Intellectual Property Rights.

Ownership. Each party agrees that except as provided below, it shall acquire no right, title or interest in or to the other party's information, software, data, tools, processes or methods, or any copyrights, trademarks, service marks, trade secrets, patents or any other intellectual or intangible property or property rights of the other by virtue of the service provided or materials delivered pursuant to this Agreement. Customer shall own all right title and interest in and to the underlying factual data gathered through the delivery of services under this Agreement. Winston shall own all right title and interest in and to Winston's trade secrets, Confidential Information or other proprietary rights in any creative or proprietary ideas, information or other material used by Winston or presented to Customer ("**Technical Elements**") including, but not limited to: data, software, modules, components, designs, utilities, databases, subsets, objects, program listings, tools, models, methodologies, programs, systems, analysis frameworks, leading practices, report formats, manner of data expression and specifications. Winston grants Customer a nonexclusive, royalty-free license to use only the Technical Elements integrated into any deliverable for Customer's internal purposes only. We, upon written notification to us, authorize you to use any of the Technical Elements so long as such use is not to create derivative works and is for your internal business purposes and, if disclosed to a third party, is subject to a written nondisclosure agreement to which we are a party requiring such third party to maintain the confidentiality of the Technical Element and use such Technical Element only for your benefit. Technical Elements shall not include those deliverables Winston creates uniquely for your sole use ("**Custom Materials**") as further defined in an applicable SOW. Custom Materials shall be deemed a "Work Made For Hire" under the Copyright Act of 1976.

Marks. Neither party shall use the other party's trademarks, service marks, trade names or product names other than as explicitly set forth in this Agreement. During the Term, unless you notify us otherwise, we may include your name in a list of customers on our website or in promotional materials or as a reference in sales presentations. If you are granted the right to use any of our certification seals or logos ("**Winston Marks**") under the terms of this Agreement, you may use the Winston Marks only as we may authorize. If we install or provide any Winston-owned hardware or software tools to facilitate our performance of the SOW, you agree to use the hardware or software for your internal purposes only as defined in the SOW, not to distribute the hardware or software, and not to reverse engineer, decompile, or disassemble the hardware or software. We shall have the right to revoke your right to use such hardware or software at any time, in which case you shall return the hardware or software to us. Your right to use the hardware or software shall automatically terminate on termination of this Agreement or on completion of the SOW for which the hardware or software was provided.

6. Representations.

ALL SERVICES AND DELIVERABLES PROVIDED BY US ARE PROVIDED "AS IS". EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, WE DISCLAIM ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT GUARANTEE THAT ANY NETWORK, COMPUTER SYSTEMS, OR ANY PORTIONS THEREOF ARE SECURE. NEITHER PARTY MAKES ANY WARRANTY HEREUNDER TO ANY THIRD PARTY ON BEHALF OF THE OTHER PARTY. THIS AGREEMENT IS NOT INTENDED TO CREATE ANY THIRD PARTY BENEFICIARY RELATIONSHIP.

7. Indemnity.

To the extent authorized under Texas law, each party ("Indemnifying Party") agrees to indemnify, defend and hold harmless the other, their affiliates, the present and former officers, members, shareholders, directors, employees, representatives, attorneys, insurers and agents of any of these, and their successors, heirs and assigns (each, an "Indemnified Party") from and against any and all losses, liabilities, claims, damages and expenses (including reasonable attorneys' fees and costs of litigation) incurred by the Indemnified Party as the result of any claim by a third party arising out of the Indemnifying Party's material breach of its obligations of this Agreement, gross negligence or willful misconduct; provided, however, that the Indemnifying Party shall not be required to reimburse the Indemnified Party for such amounts if the court rendering the judgment or the agency making the award determines that the liability underlying the judgment or award (and attorneys' fees or penalties with respect thereto) was caused by the negligence, fraud or criminal conduct of the Indemnified Party. The Indemnified Party shall promptly notify the Indemnifying Party of any potential claim covered by this indemnity, cooperate with the Indemnifying Party in the investigation and defense of the same, and allow the Indemnifying Party to control the negotiation, litigation and settlement of the claim. The Indemnifying Party's undertaking to defend, indemnify and hold harmless shall be limited to the extent that any delay by the Indemnified Party in giving notice to adversely affects the defense of, or ability to settle, such losses, liabilities, claims, damages or expenses.

Winston shall defend or settle (at our expense and discretion) any action or proceeding brought against you based upon a claim that our Technical Elements violate or infringe any existing patent, copyright, trademark, or trade secret, provided you notify us promptly and give us all necessary information and authority required for the defense or settlement of such action or proceeding, but we shall not be responsible for any cost or expense incurred or compromise made by you without our prior written consent or for any expenses incurred by you (including legal fees and expenses) in investigation or participation in any such action or proceeding. Our undertaking to indemnify and hold harmless shall not apply if the infringement or violation of rights is due to any modification or alteration of the Technical Elements that was not provided to you by us, by your use of a non-current copy or by combination of a Technical Element or portion thereof with an element owned by any third party that is not specifically authorized by us. Our undertaking to defend, indemnify and hold harmless shall be limited to the extent that any delay by you in giving notice to us adversely affects our defense of, or ability to settle, such claim. If any Technical Element or portion thereof is, in our opinion, likely to be or becomes the subject of a claim of infringement of any patent, copyright, trade secret or proprietary rights of any third party, we may at our option and expense, procure for you the right to continue using that portion affected, modify it to become non-infringing (so long as the Technical Element, as modified, has functionality substantially equivalent to that provided at the time of such modification) or substitute a Technical Element of functionality substantially equivalent to that provided at the time of such substitution; if we are reasonably unable to modify, substitute or procure the right to continue using the subject Technical Element, we may require that you remove the Technical Element, and you shall promptly return or destroy all copies of such Technical Element and receive a pro-rata refund of the fee paid therefore, less accumulated depreciation calculated on a straight-line method over a useful life of four years from the Effective Date. You agree, as a material term of this Agreement, that your rights and remedies for any breach of any representation or warranty by us herein shall be as provided in this Agreement as your exclusive remedy and that we shall have no liability to you or others except as provided herein.

8. Limitation of Liability.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR A BREACH OF PERSONAL INFORMATION OR PROTECTED HEALTH INFORMATION, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OF THE OTHER PARTY OR ANY THIRD PARTY, OR FOR LOSS OF BUSINESS, PROFITS, BUSINESS INTERRUPTION, OR LOSS OF DATA, REGARDLESS OF WHETHER SUCH PARTY RECEIVES NOTICE OF THE POTENTIAL FOR SUCH DAMAGES. NOTWITHSTANDING ANY PROVISION OF THIS PARAGRAPH, THIS AGREEMENT, AS WELL AS ANY BUSINESS ASSOCIATE AGREEMENT ENTERED INTO BETWEEN THE PARTIES, AND EXCEPT AS EXPRESSLY SET FORTH IN ANY APPLICABLE SOW ENTERED INTO PURSUANT TO THIS AGREEMENT, IN NO EVENT (OTHER THAN A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) SHALL EITHER PARTY'S AGGREGATE LIABILITY FOR ANY CLAIMS, ACTIONS, FEES, COSTS, MITIGATION-RELATED OR OTHER EXPENSES, PENALTIES OR SIMILAR AMOUNTS RELATING TO OR ARISING OUT OF ANY BREACH OF PERSONAL INFORMATION OR PROTECTED HEALTH INFORMATION, EXCEPT FOR CIVIL MONETARY PENALTIES IMPOSED BY ANY GOVERNMENTAL AGENCY) REGARDLESS OF THE FORM OF ACTION (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, PRODUCTS LIABILITY, STRICT LIABILITY, COMPLIANCE REVIEW OR SIMILAR INQUIRY), EXCEED ONE MILLION DOLLARS. FOR PURPOSES OF THIS PARAGRAPH, THE TERMS "BREACH," "PERSONAL INFORMATION," AND "PROTECTED HEALTH INFORMATION" (OR ANY SIMILAR TERMS UNDER APPLICABLE LAW) SHALL HAVE THE SAME MEANINGS AS UNDER THE APPLICABLE FEDERAL OR STATE BREACH NOTIFICATION STATUTE(S) OR REGULATION(S). THIS AGREEMENT ALLOCATES RISKS BETWEEN THE PARTIES AND OUR PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED IN THIS SECTION.

9. Insurance.

During the term of this agreement, Winston agrees to maintain, at its own expense, the following minimum insurance coverage and limits:

- a) Worker's Compensation insurance as required by law and employer's liability insurance.
- b) Commercial General Liability Insurance, including Products, Completed Operations Liability and Personal Injury, Blanket Contractual Liability and Broad Form Property Damage Liability coverage for damages to any property or person with limits of one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000) aggregate.
- c) Errors and Omissions Liability Insurance covering the liability for financial loss due to error, omission, negligence of employees and machine malfunction with a limit of one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000) aggregate.
- d) Cyber Liability Policy covering liability and/or damages due to theft or loss of Customer Data with limits of three million dollars (\$3,000,000) for each occurrence and aggregate.

If requested, Winston shall provide to Customer insurance certificates showing compliance with this paragraph.

10. Dispute Resolution & Escalation Policy.

The parties shall make a good faith effort to resolve, without resort to arbitration or litigation, any dispute arising under or related to this Agreement. If the parties do not agree upon a resolution of the dispute, any controversy or claim arising out of or relating to this Agreement (except as provided below with respect to Sections 5, 10 and 11) between Customer and us, or the breach thereof, shall be subject to non-binding arbitration prior to the filing of a complaint in a court of law; provided, however, that such arbitration shall be final and binding and may be enforced in any court with the requisite jurisdiction if the parties agree in advance, in writing, that such arbitration shall have final, binding effect. All arbitration, whether binding or non-binding, shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

Notwithstanding the paragraph above, each party acknowledges that violation by it of any provision of Section 5, 10 and 11 of this Agreement may cause irreparable damage to the other party for which any remedy at law would be inadequate and that the affected party shall be entitled either in any court of law or equity or in any arbitration proceeding, whichever forum is selected by the affected party, to (i) temporary, preliminary, permanent, and other injunctive relief against any breach of the provisions contained in such sections and (ii) such damages as may be awarded.

11. Confidential Information

Each party acknowledges that it and its officers, employees, independent contractors, agents or subcontractors may, in the course of the Agreement, be exposed to or acquire information that is proprietary or confidential to the other party.

Definition. "Confidential Information" shall include: any information relating to a party's research, development, trade secrets, processes, procedures, formulas, business practices, business plans, strategies, budgets, customer and vendor relationships, financial information and other similar business information of a confidential nature. The term "Confidential Information" shall not include information that is (a) known to the receiving party prior to disclosure by the disclosing party or its personnel; (b) publicly available through no act or omission of the receiving party; or (c) lawfully received by the receiving party from a third party (other than the disclosing party's former or current personnel) that is not under any confidentiality obligation to the disclosing party.

Use. Each party agrees to use Confidential Information received from the other party pursuant this Agreement solely in connection with the performance of such party's obligations under this Agreement. Each party agrees to use industry standard security tools to protect its own confidential and proprietary information and/or to protect the Confidential Information of the other party from disclosure to any third party. Unless authorized to do so in writing by the other party, neither party, nor any third party acting on either's behalf, will for any reason use or disclose to any person any of the other party's Confidential Information. The term "person" as used in this Section shall be interpreted to include, without limitation, any individual, partnership, corporation or other entity. Nothing in this Agreement shall be construed as granting any rights to the receiving party, by license or otherwise, to any of the disclosing party's Confidential Information, except as expressly stated in this Agreement. In the event that a party is required to disclose Confidential Information to a court or governmental agency or pursuant to any other applicable law, such party shall, to the extent practicable prior to such disclosure, and as soon as practicable and by the best available means, notify the other party to allow it an adequate opportunity to object to the disclosure order or to take other actions to preserve the confidentiality of the information. Prior to any disclosure pursuant to this Section, a party required to disclose Confidential Information shall cooperate with the party claiming confidentiality of the information in such party's reasonable efforts to limit the disclosure by means of a protective order or a request for confidential treatment.

HIPAA. We acknowledges that, in the course of performing Services, we may receive certain confidential health information protected under state or federal law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 ("Health Information"). We will not disclose or use Health Information except as required in furtherance of our obligations under this Agreement and will use measures no less stringent than those we use to protect our own confidential and proprietary information, which measures shall be no less than reasonable care, and we shall protect all Health Information in compliance with applicable laws. In the event of any unauthorized use or disclosure or loss of any Health Information, we shall notify Customer and take such actions as may be necessary or reasonably requested by Customer to minimize the violation or the damage resulting there from. Our joint responsibilities as it pertains to protected information is detailed in our Business Associate Agreement.

Notification Protocol The parties to this Agreement agree the services may require access to personal information or protected health information of Participants. The handling of such information shall be subject to the terms of the Business Associate Agreement ("BAA") attached hereto as Appendix A and the notification protocol to covered entities of potential data breach or mishandling is covered by the BAA document (see OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE, SECTION C)

12. Employee Non-Solicitation.

Except with the prior written consent of the other party, both parties to this Agreement agree that, during the term of this Agreement and for a period of twenty-four (24) months thereafter, they shall not directly solicit, divert or recruit any employee of the other, who is or was an employee of that party at any time during the Term, to leave such employment.

13. Cooperation.

You shall coordinate and manage your employees, contractors or agents to facilitate the performance of any SOW by us. You shall be responsible for, and we may rely upon, the accuracy, timeliness and completeness of all data, reports and other information you supply us. You agree that prompt review and acceptance of any part of the SOW requiring acceptance is required to ensure compliance with any milestones or other specified deadlines. Any commitments we make in this Agreement or any SOW are contingent upon you meeting your obligations, as defined here. You will make your management and technical personnel who will work with us and will perform those activities described as your responsibility in the SOW reasonably available to us. Each party will designate and maintain during the term of the Agreement a point of contact, and will notify the other party of the name of such point of contact who will have the authority and power to make decisions with respect to actions to be taken in connection with the Agreement and all documentation included in a SOW. We agree to treat this information with confidentiality as provided in this Agreement and to only use this information as required to provide the Services. You shall obtain all governmental approvals, licenses, and permits necessary, if any, for completion of any SOW. If required by an SOW, you shall prepare any installation site in accordance with our instructions ensuring that any equipment that interfaces with your computer system operates in accordance with the manufacturer's specifications. If you fail to make any preparations required by an SOW, and this failure causes us to incur costs during our service implementation, you agree to reimburse us for those costs.

14. General Provisions.

Severability & Waiver. The invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provision of this Agreement. In the event that any provision is determined to be invalid, unenforceable or otherwise illegal, such provision shall be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intentions of the parties, and the remainder of the Agreement shall remain in full force and effect. No term or condition of this Agreement shall be deemed waived, and no breach shall be deemed excused, unless such waiver or excuse is in writing and is executed by the party from whom such waiver or excuse is claimed. No such waiver shall be deemed a waiver of any preceding or succeeding breach or right in the same or in any other provision hereof.

Headings and References. Section numbers and headings are used for convenience and are not to be construed as limitations of the substance of any provision. The words "you", "your" and "Customer" mean the Customer indicated above, and the words "we", "us", "our" and "Winston" refer to Winston Financial Services, Inc. and its affiliates.

Mediation: The parties agree to use mediation for dispute resolution prior to and formal legal action being taken on this Contract.

Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard for its conflicts of law provisions. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any

way arising out of this Agreement must be brought solely and exclusively in state or federal courts located in the State of Texas, and each party irrevocably submits to the sole and exclusive jurisdiction of these courts in person, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other party. Venue for state court actions shall be Williamson County, Texas, and venue for Federal Court actions shall be the Austin Division of the Central District of Texas.

Force Majeure. With the exception of a party's obligation to make payments properly due to the other party, neither party shall be deemed in default or otherwise liable under this Agreement for any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance, disruption of the public markets, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

Assignment. Neither this Agreement nor any right or obligation arising hereunder may be assigned (voluntarily, by operation of law, or otherwise), in whole or in part, by either party without the prior written consent of the other party, such consent not to be unreasonably withheld; provided, however, that either party shall have the right, upon written notice to the other party, to assign this Agreement to any person or entity that acquires all or substantially all of such party's business or assets. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

Entire Agreement & Amendment. This Master Services Agreement ("MSA") and the one or more attached Appendices and Statements of Services (each an "SOW"), along with Williamson County 15RFP123 ("Hosted Solution Service - Web Based Benefit Enrollment System" and the Winston Response dated October 20, 2015, each fully incorporated herein, together comprise the contract documents and the complete agreement between the parties ("Agreement") regarding those Services to be provided hereunder. From time to time, additional terms governing the Services to be provided under this Agreement may be contained in a subsequent SOW, and each such SOW shall become part of this Agreement when signed on behalf of Winston and Customer effective as of the date set forth in the SOW. If there is a conflict between the terms of this MSA and any SOW, the terms of the SOW shall prevail.

This Agreement states the entire understanding of the parties relating to the subject matter thereto and supersedes all prior discussions and negotiations and may only be modified in a writing signed by both parties. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties may deliver signed copies of this Agreement via facsimile or as a PDF via email, and such copies shall be deemed originals. Communication by electronic mail shall not be construed as an effective amendment to the Agreement unless accompanied by a manually signed attachment.

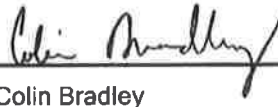
Notice. All notices provided for herein shall be sent by confirmed facsimile, or guaranteed overnight mail, with tracing capability, or by first class United States mail, with postage prepaid, addressed to the other party at their respective addresses set forth below or such other addresses as either party may designate in writing to the other from time to time for such purposes. All notices provided for herein shall be deemed given or made when received.

For Customer	For Winston
Williamson County 701 S. Main Street, Georgetown, TX 78627 Attention: Dan A. Gattis, Williamson County Judge	Winston Financial Services, Inc. Attention: Colin Bradley 2399 Highway 34, Suite C-2 Manasquan, NJ 08736

Independent Contractors. The parties to the Agreement are independent contractors and the Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Winston and Customer. Neither party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

15. Signatures.

Intending to be legally bound and having reviewed this Agreement in its entirety, Winston and Customer have caused this Agreement to be executed by their authorized representatives effective as of the date set forth below.

	Winston Financial Services, Inc.	Williamson County
AUTHORIZED SIGNATURE:		
PRINTED NAME:	Colin Bradley	Dan A. Gattis
TITLE:	Vice President, Business Development	County Judge
COMPANY NAME ADDRESS & TELEPHONE:	Winston Financial Services, Inc. 2399 Highway 34, Suite C Manasquan, NJ 08736 732-899-0990	710 S. Main Street Georgetown, TX 78627 512-943-1550
EFFECTIVE DATE:	January 5, 2016	

Client Initials 

APPENDIX A: Business Associate Agreement

Effective: January 5, 2016

BUSINESS ASSOCIATE AGREEMENT (the "BAA") is entered into by and between all benefit plans sponsored by Williamson County (referred to collectively as "Covered Entity"), and Winston Financial Services, Inc. ("Business Associate").

DEFINITIONS

Except as otherwise provided herein, the terms used in this BAA shall have the same meaning as those terms in the Electronic Transaction, Security or Privacy Rule, as the case may be.

Specific definitions:

(a) *Electronic Transaction Rule* means the standards for processing Standard Transactions and Code Sets at 45 CFR Parts 160 and 162.

(b) *Individual* has 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).

(c) *Personal Information* means any data in whatever format that is subject to federal or state laws requiring the safeguarding of, and regulating and restricting access, collection, use, disclosure, processing, destruction, and free movement of individually identifiable personal information.

(d) *Privacy Rule* means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160-164.

(e) *Protected Health Information* has the same meaning as the term "protected health information" in 45 CFR §160.103, including electronic protected health information, but limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(f) *Secretary* means the Secretary of the Department of Health and Human Services or his designee.

(g) *Security Rule* means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160-164.

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

(a) Business Associate agrees to not Use or Disclose Protected Health Information other than as permitted or required by this BAA or as Required by Law.

(b) Business Associate agrees to use appropriate safeguards to prevent the Use or Disclosure of Protected Health Information other than as provided for by this BAA. In addition, Business Associate agrees to implement Administrative, Physical and Technical safeguards consistent with the requirements of the Security Rule that reasonably and appropriately protect the Confidentiality, Integrity and Availability of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity. Effective February 17, 2010, and subject to regulatory or other guidance issued pursuant or in response to the American Recovery and Reinvestment Act of 2009 (ARRA), Business Associate will comply with the Privacy Rule and the Security Rule to the extent required under ARRA which are incorporated herein by reference, including but not limited to 45 CFR §§ 164.308, 164.310, 164.312, and 164.316.

(c) Business Associate agrees to report to Covered Entity and/or Plan Sponsor (i) any Use or Disclosure of Protected Health Information not provided for by this BAA, (ii) any Security Incident, (iii) any Breach of Unsecured Protected Health Information, or (iv) to the extent required under any state breach notification statute, any unauthorized acquisition or access to Personal Information, as soon as possible, but not later than 30 calendar days following the date it becomes aware of such Use or Disclosure, Security Incident, Breach or unauthorized acquisition or access; provided, however, that to avoid unnecessary burden on either party, Business Associate shall report to Covered Entity any Unsuccessful Security Incidents of which it becomes aware of only upon request of Covered Entity. The frequency, content and the format of the report of Unsuccessful Security Incidents shall be

Client Initials 

mutually agreed upon by the parties. If the definition of "Security Incident" under the Privacy and Security Laws is amended to remove the requirement for reporting "unsuccessful" attempts to use, disclose, modify or destroy electronic PHI, then this Section shall be amended so that the provisions relating to "Unsuccessful Security Incidents" no longer apply as of the effective date of such change to the law. For the purposes of this BAA, "Unsuccessful Security Incidents" mean Security Incidents that do not result in unauthorized access, use, disclosure, modification or destruction of electronic PHI.

(d) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, agrees to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information.

(e) Business Associate agrees to provide access, at the request of Covered Entity and in a reasonable time and manner, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to enable Covered Entity to meet the requirements under 45 CFR §164.524.

(f) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in a reasonable time and manner as required under the Privacy Rule.

(g) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the Use and Disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a reasonable time and manner or as designated by the Secretary, for purposes of determining Covered Entity's compliance with the Privacy Rule.

(h) Business Associate agrees to document such Disclosures of Protected Health Information and information related to such Disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(i) Business Associate agrees to provide to Covered Entity or an Individual, in a reasonable time and manner, information collected in accordance with the preceding paragraph (i), to permit Covered Entity to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(j) Business Associate agrees to mitigate to the extent practicable any harmful effect known to Business Associate of any Security Incident, or Breach of Unsecured Protected Health Information.

(k) If Business Associate conducts any Standard Transaction for or on behalf of Covered Entity, Business Associate shall comply with the requirements under the Electronic Transaction Rule.

(l) To the extent Business Associate creates or receives Personal Information from Covered Entity or Plan Sponsor, or on behalf Covered Entity or Plan Sponsor it shall collect, maintain, process, handle, use, disclose and destroy all Personal Information in compliance with all applicable data privacy and protection laws.

(m) Solely to the extent any Breach of Unsecured Protected Health Information or unauthorized acquisition or access to Personal Information is attributable to a breach of the obligations under this BAA by Business Associate, Business Associate shall bear the reasonable costs incurred by Covered Entity and Plan Sponsor to the extent it is necessary for Covered Entity and Plan Sponsor to comply with its legal obligations relating to such breach under the applicable breach notification statute or regulation, which shall be limited to the following costs reasonably incurred by Covered Entity and Plan Sponsor in responding to such breach: (1) the reasonable cost of preparing and distributing notifications to affected individuals, (2) the reasonable cost of providing notice to government agencies, credit bureaus, and/or other required entities, (3) to the extent required by the applicable statute, the reasonable cost of providing affected individuals with credit monitoring services for a specific period not to exceed twelve (12) months, and (4) the reasonable cost of any other measures required under applicable law.

(n) To the extent Business Associate receives, stores, processes or otherwise deals with any patient records from the Covered Entity or Plan Sponsor that are entitled to protection under the federal regulations issued at 42 CFR Part 2, Business Associate agrees to be bound by those regulations. In addition, if necessary, Business

Associate will resist in judicial proceedings any efforts to obtain access to such patient records except as permitted by 42 CFR Part 2.

(o) Except for payments from Covered Entity for services performed pursuant to this BAA and the Agreement, Business Associate may not directly or indirectly receive remuneration in exchange for PHI.

(p) Business Associate may not use or disclose Protected Health Information for research or marketing purposes without first receiving prior written approval from the Covered Entity and obtaining the necessary authorization from the affected individuals.

PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

General Use and Disclosure Provisions

Except as otherwise limited in this BAA, Business Associate may Use or Disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such Use or Disclosure would not violate (i) the Privacy Rule if done by Covered Entity or (ii) the minimum necessary policies and procedures of the Covered Entity supplied to Business Associate.

Specific Use and Disclosure Provisions

(a) Except as otherwise limited in this BAA, Business Associate may Use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this BAA, Business Associate may Disclose Protected Health Information for the proper management and administration of the Business Associate, provided that (i) Disclosures are Required by Law, or (ii)(A) Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and (ii)(B) the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this BAA, Business Associate may Use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

(d) Business Associate may Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

OBLIGATIONS OF COVERED ENTITY

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to Use or Disclose Protected Health Information, to the extent that such changes may affect Business Associate's Use or Disclosure of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction to the Use or Disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.

Requests by Covered Entity

(a) Except as otherwise provided in this BAA, Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

TERM AND TERMINATION

(a) *Term.* The term of this BAA shall be effective as of January 5, 2016 and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information as determined by Business Associate, protections are extended to such information, in accordance with the termination provisions in this Section, subject to any record retention requirements under the BAA or required by law.

(b) *Termination for Cause.* Upon either party's knowledge of a breach by the other party, the non-breaching party shall either:

(1) Provide an opportunity for breaching party to cure the breach or end the violation and terminate this BAA and the Agreement, if any, if the breaching party does not cure the breach or end the violation within a reasonable time specified by the non-breaching party;

(2) Immediately terminate this BAA and the Agreement, if any, if the breaching party has breached a material term of this BAA and, in the non-breaching party's sole discretion, cure is not possible; or

(3) If, in the non-breaching party's sole discretion, neither termination nor cure is feasible, the non-breaching party will report the violation to the Secretary.

(c) *Effect of Termination.*

(1) Except as provided in paragraph (2) of this Section, upon termination of this BAA, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon such determination that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections and obligations of this BAA to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

MISCELLANEOUS

(a) *Regulatory References.* A reference in this BAA to a section in the Electronic Transaction, Privacy or Security Rule means the section as in effect or as amended.

(b) *Amendment.* In the event that additional standards are promulgated under the Administrative Simplification Section of the Health Insurance Portability and Accountability Act of 1996, or any existing standards are amended, including without limitation the Privacy Standards, Security Standards, and the Transactions and Code Sets Standards, such as under the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted under ARRA, the parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of the Electronic Transaction, Privacy or Security Rule, the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, or any applicable state law, as amended. Except as herein otherwise provided, no amendment or modification of, or supplement to, this BAA shall be binding unless duly executed in writing by each of the parties hereto.

(c) *Survival.* The respective rights and obligations of Business Associate under the Section of this BAA entitled "Effect of Termination" shall survive the termination of this BAA.

(d) *Interpretation.* Any ambiguity in this BAA shall be resolved to permit Covered Entity to comply with the Electronic Transaction, Privacy or Security Rule.

(e) *Counterparts.* This BAA may be signed in counterparts, which together will constitute one agreement.

(f) *Successors and Assigns.* This BAA and each party's obligations hereunder will be binding on the representatives, assigns, and successors of such party and will inure to the benefit of the assigns and successors of such party; provided, however, that any such assignment shall not be effective absent the consent of the non-assigning party which shall not unreasonably withheld or delayed.

(g) *No Third Party Beneficiaries.* Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than parties and their respective successors or assigns, any rights, remedies or obligations whatsoever.

(h) *Governing Law.* This BAA will be governed by and interpreted in accordance with the laws of the State of New York, without regard to principles of conflicts of law. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this BAA must be brought solely and exclusively in state or federal courts located in the State of New York, and each party irrevocably submits to the sole and exclusive jurisdiction of these courts in person am, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other party.

(k) *Entire Agreement.* This BAA sets forth the full and complete understanding of the parties hereto with regard to its subject matter.

(l) *Waiver.* The failure of the Covered Entity or Business Associate to object or to take affirmative action with respect to any conduct of the other which is in violation of this BAA shall not be construed as a waiver of that violation or any prior or future violations of this BAA.

(m) *Headings.* The sections and subsections headings used herein are for reference and convenience only, and shall not enter into the interpretation thereof.

(n) *Notices.* Any notice which is to be given by one party to the other under this BAA will be given in writing and delivered in accordance with the addresses specified in the Agreement.

IN WITNESS WHEREOF, the parties have caused this BAA to be signed by their duly authorized representatives or officers, effective as of January 5, 2016

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: [Signature]
Name: DR. A. GATTO
Title: Chief, DUSA
Date: 01-28-2016

By: [Signature]
Name: Colin Bruckley
Title: Vice President
Date: 12/28/2015