Docusign City Council Transmittal Coversheet

RFP	6798
File Name	Administration of IRS Section 125
Purchasing Contact	Jamie Cogdell
City Council Target Date	September 11, 2018
Piggy Back Option	No
Contract Expiration	September 11, 2023
Ordinance	18-1428

CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND DISCOVERY BENEFITS, INC.
(CONTRACT 6798)

THIS CONTRACT is made and entered into this date 9/11/2018, by and between Discovery Benefits, Inc. a North Dakota corporation, whose address is 4321 20th Ave. S. Fargo, ND 58103, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

SCOPE OF SERVICES

Supplier shall provide products and/or services in accordance with the City's document RFP 6798-Supply of Administration of IRS Section 125 Flexible Spending Accounts of Medical Care and Dependent Care Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

(a) Special Terms and Conditions **(Exhibit "A");**
(b) City of Denton's RFP 6798 **(Exhibit "B" on File at the Office of the Purchasing Agent);**
(c) City of Denton Standard Terms and Conditions **(Exhibit "C");**
(d) Insurance Requirements **(Exhibit "D");**
(e) Certificate of Interested Parties Electronic Filing **(Exhibit "E");**
(f) Contractor's Pricing Proposal **(Exhibit "F")**;
(g) Reimbursement Account Administrative Services Agreement **(Exhibit "G")**
(h) Business Associate Agreement **(Exhibit "H")**
(i) House Bill 89 Verification **(Exhibit "I")**
(j) Senate Bill 252 Certification **(Exhibit "J")**

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

CONTRACTOR

BY: DocuSigned by: John Biwer 788BD71F9D4B47A...
AUTHORIZED SIGNATURE

Date: 9/5/2018

Name: John Biwer

Title: President

7012396210
PHONE NUMBER

jbiwer@discoverybenefits.com
EMAIL ADDRESS

jbiwer@discoverybenefits.com

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

THIS AGREEMENT HAS BEEN BOTH REVIEWED AND APPROVED as to financial and operational obligations and business terms.

DocuSigned by: Carla Romine 31B899921E48439...
SIGNATURE

Carla Romine
PRINTED NAME

Human Resources Director
TITLE

Human Resources
DEPARTMENT

CITY OF DENTON, TEXAS

BY: DocuSigned by: Todd Hileman B776C711DA0D454...
TODD HILEMAN
CITY MANAGER

Date: 9/12/2018

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: DocuSigned by: Jennifer Walters C5BFAFC1821946D...

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: DocuSigned by: Mack Reinwand 7F9D328BF0204E5...

Exhibit A
Special Terms and Conditions

1. Total Contract Amount
The contract total for services shall not exceed $166,276. Pricing shall be per Exhibit F attached.

2. Contract Terms

The contract term will be five (5) years, effective from date of award.

The contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. At the sole option of the City of Denton, the contract may be further extended as needed, not to exceed a total of six (6) months.

Exhibit C
Standard Purchase Terms and Conditions

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's contract are applicable to contracts/purchase orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller or respondent herein after referred to as Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the seller's proposal response, invoice or statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the contract/purchase order these written provisions will take precedence.

The Contractor agrees that the contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a solicitation to purchase goods, and sections 9, 10, 11, 22 and 32 shall apply only to a solicitation to purchase services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.

3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be

shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth the purchase order.

7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

The contractor shall, at all times, exercise reasonable precautions for the safety of their employees, City Staff, participants and others on or near the City's facilities.

10. **WORKFORCE**

A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Denton contract or on the City's property .

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed

any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

Immigration: The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS**: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

Environmental Protection: The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq*.) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq*.).

12. **INVOICES**:

A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department**. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount.

The City will furnish a tax exemption certificate upon request.

13. **PAYMENT**:

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received

in Accounts Payable, whichever is later.

B. **If payment is not timely made, (per paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

i. delivery of defective or non-conforming deliverables by the Contractor;

ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;

vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or

vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given that any awarded firm who is in arrears to the City of Denton for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **TRAVEL EXPENSES**: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. **FINAL PAYMENT AND CLOSE-OUT**:
A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.
B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. **SPECIAL TOOLS & TEST EQUIPMENT**: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. **RIGHT TO AUDIT**:
A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. All books and records will be made available within a 50 mile radius of the City of Denton. The City's cost of the audit will be borne by the City.. However, if an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor in the form of re-performance if related to the services which must be payable within five (5) business days of receipt of an invoice if the overpayment is for Contractor fees invoiced to the City.
B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

18. **SUBCONTRACTORS**:
A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. **WARRANTY-PRICE**:

A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. **WARRANTY – TITLE**: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. **WARRANTY – DELIVERABLES**: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.
B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

22. **WARRANTY – SERVICES**: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES**: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. **RIGHT TO ASSURANCE**: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. **STOP WORK NOTICE**: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

26. **DEFAULT**: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

28. **TERMINATION WITHOUT CAUSE**: The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon sixty (60) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to

the date of termination in accordance with the terms hereof.

29. **FRAUD**: Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

30. **DELAYS**:
A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY**:
A. Definitions:

i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for: (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor’s subcontractors, and third parties), ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct or a breach of any legally imposed strict liability standard.

B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR’S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE**

RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

TO THE EXTENT PERMITTED BY LAW, THE CITY AGREES TO LIMIT THE CONSULTANT'S LIABILITY UNDER THIS SECTION TO THE AMOUNT OF AVAILABLE INSURANCE PROCEEDS, REGARDLESS OF LEGAL THEORY PLED.

32. **INSURANCE**: The following insurance requirements are applicable, in addition to the specific insurance requirements detailed in **Appendix A** for services only**.** The successful firm shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton.

A. General Requirements:

i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

City of Denton
Materials Management Department
901B Texas Street
Denton, Texas 76209

vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

viii. If insurance policies are not written for amounts agreed to with the City, the Contractor

shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverage's indicated within the Contract.

xiv. The insurance coverage's specified in within the solicitation and requirements are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the solicitation instrument.

33. **CLAIMS**: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material

submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's' ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

38. **OWNERSHIP AND USE OF DELIVERABLES**: The City shall own all rights, titles, and interests throughout the world in and to the deliverables. Contractor retains exclusive ownership rights to and reserves the right to independently use its experience and know-how, including processes, ideas, concepts, and techniques acquired prior to or developed in the course of

performing its services.

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

39. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

40. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

41. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of

securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

42. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

44. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City of Denton, Texas for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City of Denton, Texas, or his designee under this agreement. The contractor is expressly free to advertise and perform services for other parties while performing services for the City.

45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

46. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as,

or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

47. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

48. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

49. **DISPUTE RESOLUTION**:
A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

50. **JURISDICTION AND VENUE**: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this

Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

51. **INVALIDITY**: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

52. **HOLIDAYS:** The following holidays are observed by the City:

New Year's Day (observed)
MLK Day
Memorial Day
4th of July
Labor Day
Thanksgiving Day
Day After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)
New Year's Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or his authorized designee.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**
The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Denton Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Denton.

55. **EQUAL OPPORTUNITY**
A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of,

or be otherwise subjected to discrimination under any activities resulting from this RFQ.
B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)**
The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –
i. "Component" means an article, material, or supply incorporated directly into an end product.
ii. "Cost of components" means -
(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
iii. "Domestic end product" means-
(1) An unmanufactured end product mined or produced in the United States; or
(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
v. "Foreign end product" means an end product other than a domestic end product.
vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

57. **RIGHT TO INFORMATION:** The City of Denton reserves the right to use any and all information presented in any response to this contract, whether amended or not, except as prohibited by law. Selection of rejection of the submittal does not affect this right.

58. **LICENSE FEES OR TAXES:** Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

59. **PREVAILING WAGE RATES:** The contractor shall comply with prevailing wage rates as

defined by the United States Department of Labor Davis-Bacon Wage Determination at http://www.dol.gov/whd/contracts/dbra.htm and at the Wage Determinations website www.wdol.gov for Denton County, Texas (WD-2509).

60. **COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

61. **FEDERAL, STATE, AND LOCAL REQUIREMENTS:** Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Respondent shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City of Denton and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

62. **DRUG FREE WORKPLACE:** The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

63. **RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

64. **FORCE MAJEURE:** The City of Denton, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the

circumstances causing the non-performance or delay in performance.

65. **NON-WAIVER OF RIGHTS:** Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

66. **NO WAIVER OF SOVEREIGN IMMUNITY:** The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

67. **RECORDS RETENTION:** The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

Should a conflict arise between any of the contract documents, it shall be resolved with the following order of precedence (if applicable). In any event, the final negotiated contract shall take precedence over any and all contract documents to the extent of such conflict.

1. **Final negotiated contract**
2. **RFP/Bid documents**
3. **City's standard terms and conditions**
4. **Purchase order**
5. **Supplier terms and conditions**

Exhibit D
INSURANCE REQUIREMENTS AND WORKERS' COMPENSATION REQUIREMENTS

Upon contract execution, all insurance requirements shall become contractual obligations, which the successful contractor shall have a duty to maintain throughout the course of this contract.

STANDARD PROVISIONS:

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain until the contracted work has been completed and accepted by the City of Denton, Owner, the minimum insurance coverage as indicated hereinafter.

Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or longer, if so noted:

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A or better**.
- Intentionally Omitted.
- The General Liability Insurance iability policy shall be endorsed to provide the following:
    - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.
    - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
    - Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.
- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***
- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that

occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.

- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.

- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:

[X] A. **General Liability Insurance:**

General Liability insurance with combined single limits of not less than **$1,000,000.00** shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.

- Coverage B shall include personal injury.

- Coverage C, medical payments, is not required.

If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and ISO Form GL 0404) is used, it shall include at least:

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.

- Broad form contractual liability (preferably by endorsement) covering this contract, personal injury liability and broad form property damage liability.

[X] **Automobile Liability Insurance:**

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than **$500,000** either in a single policy or in a combination of basic

and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

Satisfaction of the above requirement shall be in the form of a policy endorsement for:

- any auto, or
- all hired and non-owned autos.

[X] **Workers' Compensation Insurance**

Contractor shall purchase and maintain Workers' Compensation insurance which meets the minimum statutory requirements for issuance of the Contractor's state of incorporation, has Employer's Liability limits of at least $100,000 for each accident, $100,000 per each employee, and a $500,000 policy limit for occupational disease. The City need not be named as an "Additional Insured". For building or construction projects, the Contractor shall comply with the provisions of Attachment 1 in accordance with §406.096 of the Texas Labor Code and rule 28TAC 110.110 of the Texas Workers' Compensation Commission (TWCC).

[ ] **Owner's and Contractor's Protective Liability Insurance**

The Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under this contract, an Owner's and Contractor's Protective Liability insurance policy naming the City as insured for property damage and bodily injury which may arise in the prosecution of the work or Contractor's operations under this contract. Coverage shall be on an "occurrence" basis and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance. Policy limits will be at least **$500,000.00** combined bodily injury and property damage per occurrence with a **$1,000,000.00** aggregate.

[ ] **Fire Damage Legal Liability Insurance**

Coverage is required if Broad form General Liability is not provided or is unavailable to the contractor or if a contractor leases or rents a portion of a City building. Limits of not less than _____ each occurrence are required.

[ ] **Professional Liability Insurance**

Professional liability insurance with limits not less than **$1,000,000.00** per claim with respect to negligent acts, errors or omissions in connection with professional services is required under this Agreement.

[ ] **Builders' Risk Insurance**

Builders' Risk Insurance, on an All-Risk form for 100% of the completed value shall be provided. Such policy shall include as "Named Insured" the City of Denton and all subcontractors as their interests may appear.

[ ] **Environmental Liability Insurance**

Environmental liability insurance for $1,000,000 to cover all hazards contemplated by this contract.

[ ] **Riggers Insurance**

The Contractor shall provide coverage for Rigger's Liability. Said coverage may be provided by a Rigger's Liability endorsement on the existing CGL coverage; through and Installation Floater covering rigging contractors; or through ISO form IH 00 91 12 11, Rigger's Liability Coverage form. Said coverage shall mirror the limits provided by the CGL coverage

[ ] **Commercial Crime**

Provides coverage for the theft or disappearance of cash or checks, robbery inside/outside the premises, burglary of the premises, and employee fidelity. The employee fidelity portion of this coverage should be written on a "blanket" basis to cover all employees, including new hires. This type insurance should be required if the contractor has access to City funds. Limits of not less than $_____ each occurrence are required.

[ ] **Additional Insurance**

Other insurance may be required on an individual basis for extra hazardous contracts and specific service agreements. If such additional insurance is required for a specific contract, that requirement will be described in the "Specific Conditions" of the contract specifications.

ATTACHMENT 1

☐ Workers' Compensation Coverage for Building or Construction Projects for Governmental Entities

A. Definitions:

Certificate of coverage ("certificate")-A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any overage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

1. a certificate of coverage, prior to that person beginning work on the

project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

2. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

4. obtain from each other person with whom it contracts, and provide to the contractor:

a. a certificate of coverage, prior to the other person beginning work on the project; and

b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The contractor’s failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

Exhibit E
Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at : https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

EXHIBIT F
PROPOSAL

Discovery Benefits, Inc.

Fargo, ND

Pricing Sheet for Administration of IRS Section 125 Claims: FSA and Dependent Care

ITEM	QTY	UOM	Type of Service Requested	Cost of Service	Total Cost of Service (Monthly)
Cost of Claims Administration for IRS Section 125 Plan					
1	725	PEPM	Dependent Child Care Only -- Enrolled Employee	$3.60	$2,610.00
Ancillary Administration Costs					
2	1	EA	Communication Cost(s)	$0.00	$0.00
3	1	EA	Initial Set-Up Fee	$0.00	$0.00
4	5	EA	Enrollment Meeting Support (5 years)	$0.00	$0.00
5	5	EA	Annual Renewal Fee (5 years)	$0.00	$0.00

Discovery Benefits

BUSINESS ASSOCIATE AGREEMENT

RECITALS

WHEREAS, DBI provides certain administrative services, activities or functions in connection with the Plan ("Services") pursuant to a services agreement ("Services Agreement") between DBI and Employer (also "Sponsor"); and

WHEREAS, the parties desire to enter into this Business Associate Agreement (this "Agreement"), effective upon the earlier of the respective Services Agreement effective date or the date of first receipt of PHI from the Plan or Employer by DBI, as set forth below for the purpose of addressing the following law, as amended and clarified by the HIPAA Omnibus Rule or any regulation, rule or guidance that may be issued after the effective date of this Agreement:

- The Health Information Technology for Economic and Clinical Health Act ("HITECH Act") enacted as part of the American Recovery and Reinvestment Act of 2009 and the regulations promulgated thereunder relating to the privacy and security of protected health information;
- The "Standards for Privacy of Individually Identifiable Health Information," 45 CFR Part 160 (specifically recognizing here 45 CFR Part 160, Subparts C, D, and E ("Enforcement Rule")) and Part 164, Subparts A and E ("Privacy Rule");
- The "Standards for Electronic Transactions," 45 CFR Part 160, Subpart A and Part 162, Subpart A and Subparts I through R ("Electronic Transaction Rule");
- The "Security Standards for the Protection of Electronic Protected Health Information," 45 CFR Part 160 and Part 164, Subparts A and C ("Security Rule"); and
- The "Standards for Breach Notification for Unsecured Protected Health Information," 45 CFR Part 160 and Part 164, Subparts A and D ("Breach Notification Rule").

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Plan and DBI agree as follows:

ARTICLE 1 – DEFINITIONS

When used in this Agreement and capitalized, the following terms have the following meanings:

1.1 "Agent" shall have the meaning given to it in Section 2.5. As provided by HIPAA, an Agent and a Subcontractor are two separate types of arrangements.

1.2 "Breach" shall have the meaning given to it by 45 CFR § 164.402.

1.3 "Business Associate" shall have the meaning given to it by 45 CFR § 160.103.

1.4 "Designated Record Set" shall have the meaning given to it by 45 CFR § 164.501.

1.5 "Health Care Operations" shall have the same meaning given to it in 45 CFR § 164.501.

1.6 "HIPAA" shall mean, collectively, the Privacy Rule, the Electronic Transaction Rule, the Security Rule, and/or the Breach Notification Rule, each as amended and clarified by the HIPAA Omnibus Rule.

1.7 "HIPAA Omnibus Rule" shall mean the "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act (the HITECH Act) and the Genetic Information Nondiscrimination Act (GINA)," 78 Federal Register 5566 (January 25, 2013).

1.8 "Individual" shall mean the person who is the subject of PHI and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.9 "Individual Rights Requests" shall mean Access Requests, Amendment Requests, Accounting Requests, and requests under Section 3.3.

1.10 "Payment" shall have the same meaning given to it in 45 CFR § 164.501.

1.11 "PHI" shall mean any information, the same as the term "protected health information" at 45 CFR § 160.103, whether oral or recorded in any form or medium, that: (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.

1.12 "Plan" shall have the same meaning given to it as the group health plan or plans of the Sponsor as set forth in 45 CFR § 160.103.

1.13 "Plan Administration Functions" shall have the same meaning given to it in 45 CFR § 164.504.

1.14 "Plan Administrator" shall mean the entity, individual, group or committee appointed by the Sponsor, or its successor or successors with the authority to administer the Plan.

1.15 "Privacy Official" shall mean the person designated by the Plan to serve as its privacy official within the meaning of 45 CFR § 164.530(a), and any person to whom the Privacy Official has delegated any of his or her duties or responsibilities.

1.16 "Protected Information" shall mean PHI received from the Plan or created, received, maintained or transmitted by DBI on behalf of the Plan.

1.17 "Required by Law" shall have the same meaning given to it in 45 CFR § 164.103.

1.18 "Secretary" shall mean the Secretary of the United States Department of Health and Human Services.

1.19 "Services" shall mean the activities, functions, and/or services that DBI from time to time renders to or on behalf of the Plan to the extent that those activities, functions, and/or services are covered by HIPAA.

1.20 "Subcontractor" shall have the same meaning given to it in 45 CFR § 160.103.

1.21 "Unsecured PHI" shall mean Protected Information that is not secured through the use of a technology or methodology that renders such Protected Information unusable, unreadable or indecipherable to unauthorized individuals as specified in 45 CFR § 164.402.

ARTICLE 2 – OBLIGATIONS AND ACTIVITIES OF DBI

2.1 Status of DBI. DBI acknowledges and agrees that it is a Business Associate of the Plan for purposes of the Privacy Rule.

2.2 Permitted Uses and Disclosures of Protected Information.

(a) Permitted Uses. DBI shall not use Protected Information other than as permitted by this Agreement or as Required by Law. DBI may use Protected Information: (i) in connection with the performance, management and administration of the Services; (ii) for the proper business management and administration of DBI; (iii) to carry out DBI's legal responsibilities; (iv) to report violations of law consistent with 45 CFR § 164.502(j); (v) to the extent and for any purpose authorized by an Individual under 45 CFR § 164.508; and (vi) for any purpose provided that no data is identifiable and data has been de-identified pursuant to 45 CFR § 164.514(b) (including the separate de-identification guidance issued by the Secretary on November 26, 2012). Notwithstanding the foregoing sentence, DBI shall not use Protected Information in any manner that violates the Privacy Rule, or that would violate the Privacy Rule if so used by the Plan (except for the purposes specified under 45 CFR § 164.504(e)(2)(i)(A) and (B)).

(b) Permitted Disclosures. DBI shall not disclose Protected Information other than as permitted by this Agreement or as Required by Law. DBI may disclose Protected Information: (i) in connection with the performance, management and administration of the Services; (ii) to report violations of law consistent with 45 CFR § 164.502(j); (iii) to the extent and for any purpose authorized by an Individual under 45 CFR § 164.508; and (iv) for any purpose provided that no data is identifiable and data has been de-identified pursuant to 45 CFR § 164.514(b) (including the separate de-identification guidance issued by the Secretary on November 26, 2012). In addition, DBI may also disclose Protected Information to a third party for the proper business management and administration of DBI and to carry out DBI's legal responsibilities, provided that the disclosure is Required by Law or DBI obtains, prior to the disclosure: (i) reasonable assurances from the third party that the Protected Information will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from the third party that the third party will notify DBI immediately of any instances in which it knows the confidentiality of the information has been breached. Further, DBI shall disclose, upon

request, Protected Information to the Sponsor for Plan Administration Functions and to designated Sponsor employees (or designated Business Associates of the Plan) who are working for or on behalf of the Plan for purposes of Payment and Health Care Operations (including claims assistance activities) consistent with 45 CFR § 164.506(c)(1). Notwithstanding the foregoing, DBI shall not disclose Protected Information in any manner that violates the Privacy Rule, or that would violate the Privacy Rule if so disclosed by the Plan (except for the purposes specified under 45 CFR § 164.504(e)(2)(i)(A) and (B)).

(c) Minimum Necessary. To the extent required by the Privacy Rule, DBI shall only request, use, and/or disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, and/or disclosure. For this purpose, the determination of what constitutes the minimum necessary amount of Protected Information shall be determined in accordance with Section 164.502(b) of the Privacy Rule.

(d) Direct Application of Privacy Rules. DBI shall not use and/or disclose Protected Information or provide any Services that require the use and/or disclosure of Protected Information unless such use and/or disclosure directly complies with this Section 2.2 and Sections 164.502(a)(3) and 164.504(e) of the Privacy Rule.

(e) GINA Provisions. Notwithstanding subsections (a) through (c) above, DBI shall not use and/or disclose Protected Information that is genetic information for underwriting purposes, as set forth in 45 CFR § 164.502(a)(5).

2.3 Safeguards. DBI shall maintain and use appropriate and commercially reasonable safeguards to prevent use and/or disclosure of Protected Information other than as permitted or required in this Agreement or as Required by Law.

2.4 Reports of Prohibited Disclosures. If DBI becomes aware of a disclosure of an Individual's Protected Information by DBI and the disclosure violated the provisions of this Agreement, DBI must inform the Privacy Official regarding the prohibited disclosure of the Individual's Protected Information. To the extent that a disclosure described in this Section 2.4 also constitutes a Breach of Unsecured PHI, the provisions of this Section 2.4 shall not apply, but rather the provisions of Section 2.8 shall apply.

2.5 Agents and Subcontractors. DBI shall require each of its representatives, agents, and entities (collectively, "Agents") to whom DBI provides Protected Information on behalf of the Plan to agree to observe the restrictions on use and disclosure of the Protected Information imposed upon DBI by this Agreement and the Privacy Rule. In addition, DBI shall enter into a Business Associate Agreement with each of its Subcontractors which meets the requirements of the Privacy Rule, including the requirements set forth in 45 CFR § 164.504(e).

2.6 Access by Secretary. DBI shall make available to the Secretary DBI's internal practices, books, and records (including its policies and procedures) relating to DBI's use and disclosure of Protected Information for the purpose of enabling the Secretary to assess the Plan's and/or DBI's compliance with HIPAA. DBI shall inform the Privacy Official of any request sent by the Secretary on behalf of the Plan that is received by DBI, unless it is prohibited by applicable law from doing so.

2.7 Mitigation. DBI agrees to mitigate, to the extent practicable, any harmful effect that is known to DBI of a use or disclosure of Protected Information by DBI in violation of the requirements of this Agreement.

2.8 Notice of Breach of Unsecured PHI.

(a) DBI Requirements. Upon DBI's discovery of a Breach of Unsecured PHI by DBI, DBI shall –

(1) Pursuant to the requirements set forth in subsection (c) below, provide written notice of the Breach to the Privacy Official, as soon as administratively practicable, but no later than three (3) business days after the Breach is discovered; and

(2) Pursuant to the requirements set forth in subsection (b) below, provide written notice of the Breach, on behalf of the Plan, without unreasonable delay and in no case later than sixty (60) calendar days after discovery of a Breach as authorized under 45 CFR § 164.404 or such later date as is authorized under 45 CFR § 164.412 to:

(i) each Individual whose Unsecured PHI has been, or is reasonably believed by DBI to have been, accessed, acquired, used or disclosed as a result of the Breach;

(ii) the media to the extent required under 45 CFR § 164.406; and

(iii) the Secretary to the extent required under 45 CFR § 164.408 (unless the Plan has elected to provide this notification and has informed DBI); and

(iv) the Sponsor, as noted in Section 2.8(a)(1).

(3) If the Breach involves less than 500 individuals, maintain a log or other documentation of the Breach which contains such information as would be required to be included if the log were maintained by the Plan pursuant to 45 CFR § 164.408, and provide such log to the Plan within five (5) business days of the Plan's written request.

(b) Notice Requirements. This subsection (b) provides the following special rules that shall each be applicable to the provisions of Section 2.8(a)(2) –

(1) The date that a Breach is discovered shall be determined by DBI, in its sole discretion, in accordance with the Breach Notification Rule.

(2) The content, form, and delivery of each of the notices required by Section 2.8(a)(2) shall comply in all respects with the breach notification provisions applicable to the Plan, as set forth in the Breach Notification Rule.

(3) DBI shall send the notices described in Section 2.8(a)(2)(i) to each Individual using the address on file with DBI (or as may be otherwise provided by the Plan). If the notice to any Individual is returned as undeliverable, DBI shall make one additional attempt to deliver the notice to the Individual using such information as is reasonably available to it, or shall take other action required by the Breach Notification Rule.

(4) With respect to notices required under Section 2.8(a)(2)(i) and (ii), DBI and the Privacy Official shall cooperate in all respects regarding the drafting and the content of the notices. To that end, before sending any notice to any Individual or the media under Section 2.8(a)(2)(i) or (ii), DBI shall first provide a draft of the notice to the Privacy Official. The Privacy Official shall have five (5) business days (plus any reasonable extensions) to either approve DBI's draft of the notice or revise the language of the notice. Alternatively, the Privacy Official may elect to draft the notice for review by DBI. Once DBI and the Privacy Official agree on the final content of the notice, DBI shall send the notice to the Individuals and/or the media based on the requirements of the Breach Notification Rule.

(c) Privacy Official Notice. The notice to the Privacy Official pursuant to Section 2.8(a)(1) shall include any information available to DBI that is required to be included in a notification to an Individual under 45 CFR § 164.404(c). To the extent that DBI does not have the information to be provided in the prior sentence when it is required to notify the Privacy Official, DBI shall provide such information as soon as administratively practicable after such information becomes available. Upon the Plan's written request, DBI shall provide such additional information regarding the Breach as may be reasonably requested from time to time by the Plan.

(d) Notice Fees. DBI reserves the right to charge reasonable, cost based fees for sending the notices required by this Section 2.8 should a Breach be due to actions on the part of the Sponsor, the Plan or any other entity other than DBI, its Agents or Subcontractors.

ARTICLE 3 – INDIVIDUAL RIGHTS REQUIREMENTS

3.1 Designated Record Sets.

(a) General. DBI agrees to maintain a Designated Record Set for the Plan in a manner and form that will allow the Plan to provide access and amendment rights to an Individual with respect to the Individual's Protected Information in conformance with 45 CFR §§ 164.524 and 164.526.

(b) Access to Protected Information. Upon request from the Plan, DBI shall process and respond to a request by an Individual for access to an Individual's Protected Information that is maintained by DBI in a Designated Record Set pursuant to 45 CFR § 164.524 (an "Access Request"). DBI shall respond to such Access Request by furnishing such Protected Information to the Plan within a timeframe that reasonably allows the Plan to satisfy the timeframes required by 45 CFR § 164.524. If the Protected Information that is requested is maintained electronically and the Individual requests an electronic copy of such information, DBI will provide access to the information in an electronic format that complies with 45 CFR § 164.524(c)(2)(ii). Thereafter, the Plan will be responsible for sending such information to the Individual.

(c) Amendment to Protected Information. Upon request from the Plan, DBI shall process a request by an Individual for amendments to an Individual's Protected Information that is maintained by DBI in a Designated Record Set pursuant to 45 CFR § 164.526 (an "Amendment Request"). DBI shall process such Amendment Request within a timeframe that reasonably allows the Plan to satisfy the timeframes required by 45 CFR § 164.526.

(d) Coordination with Privacy Official. DBI shall coordinate and cooperate with the Privacy Official (or any other person designated by the Plan Administrator for this purpose) regarding all processing, recordkeeping, and documentation issues relating to Access Requests and Amendment Requests. Notwithstanding the foregoing, DBI shall not be obligated to coordinate with the Privacy Official if an Individual files an Access Request or an Amendment Request with DBI and such request is directed solely to DBI.

3.2 Accounting of Disclosures of Protected Information.

(a) Documentation of Disclosures. DBI agrees to document and maintain a log of any and all disclosures from and after the date or dates required by 45 CFR § 164.528 made by DBI of Protected Information in a manner and form that will allow the Plan to provide to an Individual an accounting of disclosures or other applicable report of the Individual's Protected Information in compliance with and based on the requirements of 45 CFR § 164.528.

(b) Accounting Requests. Upon request from the Plan, DBI shall process and respond to a request by an Individual for an accounting of disclosures or other applicable report of an Individual's Protected Information pursuant to the requirements of 45 CFR § 164.528 (an "Accounting Request"). DBI shall furnish such accounting relating to the Accounting Request to the Plan within a timeframe that reasonably allows the Plan to satisfy the timeframes required by 45 CFR § 164.528. Thereafter, the Plan will be responsible for sending such information to the Individual.

(c) Coordination with Privacy Official. DBI shall coordinate and cooperate with the Privacy Official (or any other person designated by the Plan Administrator for this purpose) regarding all processing, recordkeeping, and documentation issues relating to Accounting Requests. Notwithstanding the foregoing, DBI shall not be obligated to coordinate with the Privacy Official if an Individual files an Accounting Request with DBI and such request is directed solely to DBI.

3.3 Privacy Protection Requests.

(a) Restriction Requests on Uses and Disclosures. The Plan and DBI on behalf of the Plan shall not agree to a restriction on the use or disclosure of Protected Information pursuant to 45 CFR § 164.522(a) without first consulting with the other party. DBI is not obligated to implement any restriction, if such restriction would hinder Health Care Operations or the Services DBI provides to the Plan, unless such restriction would otherwise be required by 45 CFR § 164.522(a).

(b) Confidential Communication Requests. DBI shall implement any reasonable requests by Individuals relating to a request to receive communications of Protected Information by alternative means or at alternative locations to the extent required by 45 CFR § 164.522(b).

(c) Coordination with Privacy Official. DBI shall coordinate and cooperate with the Privacy Official (or any other person designated by the Plan Administrator for this purpose) regarding all processing, recordkeeping, and documentation issues relating to requests under this Section 3.3.

ARTICLE 4 – ELECTRONIC TRANSACTION RULE

4.1 Business Associate Requirements. DBI acknowledges that it is a Business Associate of the Plan for purposes of the Electronic Transaction Rule. DBI agrees that it shall comply with all Electronic Transaction Rule requirements that may be applicable to DBI with respect to the Services it provides to and on behalf of the Plan. DBI shall also require each of its Agents and Subcontractors to whom DBI provides Protected Information that is received from, or created or received by DBI on behalf of the Plan, to comply with the applicable requirements of the Electronic Transaction Rule.

4.2 Sponsor Transmissions. The Sponsor hereby represents and warrants that all electronic transmissions with respect to the Plan between the Sponsor (either directly or through its designated agent) and DBI relating to enrollment and disenrollment information and premium payment information as each are covered by the Electronic Transaction Rule are sent or received by the Sponsor (either directly or through its designated agent) in the Sponsor's capacity as an employer and are not sent or received by the Plan.

ARTICLE 5 – OBLIGATIONS OF PLAN

5.1 Privacy Notice. Upon request, the Plan will provide DBI with a copy of its notice of privacy practices pursuant to 45 CFR § 164.520.

5.2 Authorizations. The Plan will notify DBI of any changes in or revocations of Individual authorizations for use or disclosure of Protected Information to the extent that such changes or revocations may affect DBI's use or disclosure of Protected Information.

5.3 Officials. The Plan will notify DBI of the current name and contact information of the Plan Administrator, the Privacy Official, and any other person that has the authority to act on behalf of the Plan with respect to the provisions contained in this Agreement.

5.4 Plan. Sponsor represents that its Plan documents include specific provisions to restrict the use or disclosure of PHI and to ensure adequate procedural safeguards and accounting mechanisms for such uses or disclosures, in accordance with the Privacy Rule.

5.5 Standard Requirements for Group Health Plans. The Plan represents and warrants that: (i) its plan documents, in accordance with 45 CFR § 164.504(f), allow the Plan to receive Protected Information; (ii) it has received a certification from the Sponsor in accordance with 45 CFR § 164.504(f)(2)(ii) and will provide a copy of such certification to DBI upon request; (iii) the plan document amendments permit the Plan to receive Protected Information (including detailed invoices, reports, and statements from DBI); and (iv) the Plan has determined, through its own policies and procedures and in compliance with 45 CFR § 164.502(b), that the Protected Information that it receives from DBI (including the detailed invoices, reports, and statements) contains the minimum information necessary for the Plan to carry out its Payment and Health Care Operations activities.

ARTICLE 6 – AMENDMENT AND TERMINATION

6.1 Amendment. No change, modification or attempted waiver of any of the provisions of this Agreement shall be binding upon any party hereto unless reduced to writing and signed by both parties. DBI agrees to take such action as is necessary to amend this Agreement from time to time as the Plan reasonably determines necessary to comply with HIPAA, or any other applicable law, rule or regulation.

6.2 Term. The Term of this Agreement shall be effective on the date first written above (except as otherwise noted herein) and shall terminate when all of the Protected Information received from the Plan, or created or received by DBI on behalf of the Plan, is destroyed in accordance with the Plan's authorization or is returned to the Plan (or its designated agents) pursuant to Section 6.4.

6.3 Termination. If one party to this Agreement ("Non-Breaching Party") has knowledge of a material violation of this Agreement by the other party to this Agreement ("Breaching Party"), as determined in good faith by the Non-Breaching Party, the Non-Breaching Party must promptly:

(a) Provide an opportunity for the Breaching Party to end and to cure the material violation within a reasonable time specified by the Non-Breaching Party, and if the Breaching Party does not end and cure the material violation within such time (including reasonable extensions that the Non-Breaching Party determines are necessary) to the satisfaction of the Non-Breaching Party, the Non-Breaching Party shall immediately terminate the Services rendered by DBI and any agreement or contract related thereto; or

(b) If a cure is not possible as determined by the Non-Breaching Party in its sole discretion, the Non-Breaching Party shall immediately terminate the Services rendered by DBI and any agreement or contract related thereto.

6.4 Effect of Termination. Upon termination pursuant to Section 6.3, DBI shall either destroy or return to the Plan (or any agents designated by the Plan) the Protected Information that DBI and its Agents and Subcontractors maintain in any form, and DBI and its Agents and Subcontractors shall retain no copies of the Protected Information.

However, in many situations DBI maintains one or more backup copies of Protected Information for auditing, data management, and other related purposes and DBI has determined that destruction of all copies of Protected Information that it maintains is infeasible.

Therefore, after termination of the Services and pursuant to 45 CFR § 164.504(e)(2)(ii)(J), DBI shall continue to observe and shall ensure that its Agents and Subcontractors continue to observe its obligations under this Agreement to the

extent copies of the Protected Information are retained by DBI and shall limit further uses and disclosures of Protected Information to the purposes that make its return or destruction infeasible and that are consistent with the Privacy Rule.

ARTICLE 7 – ELECTRONIC SECURITY STANDARDS

7.1 Definitions. When used in this Article, the following terms shall have the meanings set forth as follows:

(a) "Electronic Media" shall have the meaning given to it in 45 CFR § 160.103.

(b) "Electronic Protected Information" shall mean Protected Information received from the Plan or created, received, maintained or transmitted by DBI on behalf of the Plan that is transmitted by Electronic Media or maintained in Electronic Media.

(c) "Security Incident" shall have the meaning given to it in 45 CFR § 164.304.

7.2 Requirements. Pursuant to 45 CFR § 164.314(a)(2)(i), DBI shall:

(a) Comply with the applicable requirements of the Security Rule, including the requirement that DBI implement, maintain and document administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Information to the extent required by the Security Rule;

(b) Report (pursuant to the terms and conditions of Section 7.3) to the Privacy Official (or such other person designated for this purpose) any Security Incident of which DBI becomes aware and which occurred during the applicable reporting period;

(c) Require each of its Agents to whom DBI provides Electronic Protected Information to agree to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Information that is provided to the Agent to the extent required by the Security Rule; and

(d) Enter into a contract or other binding and enforceable arrangement with each of its Subcontractors that create, receive, maintain or transmit Electronic Protected Information on behalf of DBI pursuant to which the Subcontractor agrees to comply with the applicable requirements of the Security Rule.

7.3 Reporting Protocols. All reports required by Section 7.2(b) shall be provided pursuant to the terms and conditions specified in this section.

(a) Attempted Security Incidents. Reporting for any Security Incident involving the attempted unauthorized access, use, disclosure, modification or destruction of Electronic Protected Information (collectively, an "Attempted Security Incident") shall be provided pursuant to the standard reporting protocols of DBI (as determined by DBI).

(b) Successful Security Incident. Reporting for any Security Incident involving the successful unauthorized access, use, disclosure, modification or destruction of Electronic Protected Information (collectively, a "Successful Security Incident") shall be provided to the Plan pursuant to the standard reporting protocols of DBI (as determined by DBI), provided that: (i) the reports shall at a minimum include the date of the incident, the parties involved (if known, including the names of Individuals affected), a description of the Successful Security Incident, a description of the Electronic Protected Information involved in the incident, and any action taken to mitigate the impact of the Successful Security Incident and/or prevent its future recurrence; and (ii) the reports shall satisfy the minimum requirements for Security Incident reporting that may be required from time to time by the Secretary. In addition, Successful Security Incidents shall be reported to the Plan as soon as administratively practicable after the occurrence of the incident taking into account the severity and nature of the incident. Notwithstanding the foregoing, the Plan may request details about one or more Successful Security Incidents, and DBI shall have thirty (30) days thereafter to furnish the requested information.

(c) Breach of Unsecured PHI. To the extent that a Security Incident described in this Section 7.3 also constitutes a Breach of Unsecured PHI, the provisions of this Section 7.3 shall not apply, but rather the provisions of Section 2.8 shall apply.

7.4 Mitigation. DBI agrees to mitigate, to the extent practicable, any harmful effect that is known to DBI relating to any Security Incident.

7.5 Access by Secretary. DBI shall make available to the Secretary DBI's internal practices, books and records (including its policies and procedures) relating to the safeguards established by DBI with respect to Electronic Protected Information for the purpose of enabling the Secretary to assess DBI and/or the Plan's compliance with the Security Rule. DBI shall inform the Privacy Official of any request sent by the Secretary on behalf of the Plan that is received by DBI, unless DBI is prevented by applicable law from doing so.

ARTICLE 8 – GENERAL

8.1 Other Agreements. The Plan and DBI acknowledge and affirm that this Agreement is in no way intended to address or cover all aspects of the relationship of the Plan and DBI and of the Services that are rendered by DBI to and on behalf of the Plan. Rather, this Agreement deals only with those matters that are specifically addressed herein. Further, this Agreement supersedes any prior business associate agreements entered into by DBI and the Plan (or any predecessor to the Plan), and shall apply to all Protected Information existing as of the effective date of this Agreement or created or received thereafter while this Agreement is in effect.

8.2 Indemnification. Any indemnification relating to violations of this Agreement by DBI or the Plan (or the Sponsor on behalf of the Plan) shall be addressed to the extent applicable by the respective Services Agreement.

8.3 Severability. The provisions of this Agreement shall be severable, and the invalidity or unenforceability of any provision (or part thereof) of this Agreement shall in no way affect the validity or enforceability of any other provisions (or remaining part thereof). If any part of any provision contained in this Agreement is determined by a court of competent jurisdiction, or by any administrative tribunal, to be invalid, illegal or incapable of being enforced, then the court or tribunal shall interpret such provisions in a manner so as to enforce them to the fullest extent of the law.

8.4 Interpretation. The provisions of this Agreement shall be interpreted in a manner intended to achieve compliance with HIPAA. Whenever the Agreement uses the term "including" followed by a specific item or items, or there is a passage having a similar effect, such passages of the Agreement shall be construed as if the phrase "without limitation" followed such term (or otherwise applied to such passage in a manner that avoids limitations on its breadth of application). Where the term "and/or" is used in this Agreement, the provision that includes the term shall have the meaning the provision would have if "and" replaced "and/or," but it shall also have the meaning the provision would have if "or" replaced "and/or." Any reference to a section or provision of HIPAA shall include any amendment or clarification of such section or provision contained in the HIPAA Omnibus Rule and any regulation, rule or guidance issued by the Secretary following the effective date of this Agreement.

8.5 Counterparts. Any number of counterparts of this Agreement may be signed and delivered, each of which shall be considered an original and all of which, together, shall constitute one and the same instrument.

8.6 Binding Effect. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, assigns and successors in interest. The Plan shall have the right to assign this Agreement to any successor or surviving health plan, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by any such assignee.

8.7 No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, and nothing herein shall confer, upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.

8.8 Applicable Law and Disputes. The provisions of this Agreement shall be construed and administered to, and its validity and enforceability determined under HIPAA. To the extent that HIPAA is not applicable in a particular circumstance, the provisions of this Agreement shall be construed and administered to, and its validity and enforceability determined under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). In the event that HIPAA and ERISA do not preempt state law in a particular circumstance, the laws of the State of Texas shall govern. In the event of any conflict of state laws, the laws of the State of Texas shall prevail. The parties agree that any claim or action arising from this Agreement can only be brought in the United States District Court for the Northern District of Texas, and both parties consent to such jurisdiction and venue. Any disputes between the parties arising under this Agreement shall be resolved in accordance with the arbitration procedures, if any, set forth in the Services Agreement.

8.9 State Privacy and Security Laws.

(a) General. Pursuant to 45 CFR § 160.203, DBI and the Plan acknowledge that HIPAA only preempts state laws which are contrary to a HIPAA standard, requirement or implementation specification, provided that state laws which relate to the privacy of Protected Information and are more stringent than the Privacy Rule are not preempted. Accordingly, the parties acknowledge that certain State Privacy Laws affecting the privacy and/or

security of personally identifiable information (e.g., name, address, age, and social security number) relating to a Plan participant or beneficiary ("Privacy Restricted Data") may apply to the Services provided by DBI to the extent such State Privacy Laws are not preempted by HIPAA. For purposes of this Section 8.9, "State Privacy Laws" shall mean any applicable state and local privacy laws governing the creation, collection, storage, maintenance, access, modification, transmission, use or disclosure of Privacy Restricted Data.

(b) State Privacy Laws. All Privacy Restricted Data created, collected, received or obtained by or on behalf of DBI in the course of performing its Services shall be created, collected, received, obtained, stored, maintained, accessed, modified, transmitted, used, and disclosed in accordance with any and all applicable State Privacy Laws. DBI shall at all times perform the Services in accordance with the State Privacy Laws and as not to cause the Sponsor or the Plan to be in violation of the State Privacy Laws. DBI shall be fully responsible for any creation, collection, receipt, access, storage, maintenance, modification, transmission, use, and disclosure of Privacy Restricted Data performed by or on behalf of DBI that is in violation of any State Privacy Laws. DBI shall remedy and mitigate the damages of any breach of privacy, security, integrity or confidentiality with respect to the unauthorized creation, collection, receipt, storage, maintenance, access, modification, transmission, use or disclosure (a "State Breach") of Privacy Restricted Data that is or may be in violation of any State Privacy Laws.

(c) Notification. DBI shall notify the Privacy Official (using the procedures that apply to Breaches of Unsecured PHI under Section 2.8(c)) of any State Breaches by or on behalf of DBI of Privacy Restricted Data that is or may be in violation of any State Privacy Laws. In addition, DBI shall also notify the affected Plan participants and beneficiaries (using the procedures that apply to Breaches of Unsecured PHI under Section 2.8(b)) of any State Breaches by or on behalf of DBI of Privacy Restricted Data that is in violation of any State Privacy Laws and any state or local governmental agencies, authorities or other entities, but only to the extent required by such State Privacy Laws.

(d) HIPAA Coordination. The parties acknowledge that in certain situations the provisions of both Section 2.8 and this Section 8.9 shall apply. If both Sections 2.8 and 8.9 apply in a given situation, DBI shall comply with both Sections 2.8 and 8.9 to the extent applicable.

8.10 Obligation of Plan and DBI. To the extent that DBI carries out the HIPAA obligations of the Plan (including the obligations set forth in Section 2.8 and Article 3), DBI shall comply with the applicable requirements of HIPAA as they apply to the Plan in the performance of such obligations on behalf of the Plan.

Discovery Benefits

REIMBURSEMENT ACCOUNT ADMINISTRATIVE SERVICES AGREEMENT

RECITALS

The City of Denton, a Texas municipal corporation ("Employer") has adopted an Internal Revenue Code Section 125 (26 USC § 125) Cafeteria Plan (the "125 Plan") for its eligible employees. Included in the 125 Plan is one or more of the following plans or arrangements: a health flexible spending arrangement ("Health FSA"); a dependent care flexible spending arrangement ("Dependent Care FSA") (a health FSA and a Dependent Care FSA are referred to collectively as an "FSA"); and/or a limited purpose health flexible spending arrangement ("Limited Health FSA").

Employer may have also adopted one or more of the following for its eligible employees: a health reimbursement arrangement ("HRA") Internal Revenue Code Section 105 (26 USC § 105); a limited purpose health reimbursement arrangement ("Limited HRA") Internal Revenue Code Section 105 (26 USC § 105); and/or a transportation fringe benefit plan spending account ("TSA" or "Commuter") qualified under Internal Revenue Code Section 132(f) (26 USC § 132(f)).

Individually and collectively, as the context may require, the foregoing shall be referred to as the "Plan."

Employer desires Discovery Benefits, Inc. ("DBI") to assist in its administration of the Plan and DBI desires to assist Employer in the administration of the Plan.

DBI and Employer agree that DBI shall assist in the administration of the Plan on the terms and conditions set forth in this Agreement, including, without limitation that:

- Employer has established the Plan for the exclusive benefit of its employees.
- Employer is the administrator of the Plan.
- Employer remains the administrator of the Plan and responsible for the operation and maintenance of the Plan, including the establishment of eligibility and benefits and funding payment of benefits owed to participants under the Plan.
- DBI is an independent contractor in relation to Employer and to the Plan and acts as an agent on behalf of Employer in rendering services for Employer pursuant to this Agreement.
- DBI is to provide the agreed upon services without assuming any liability for the performance of any services beyond those set forth below.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Employer and DBI (each a "party" and collectively the "parties") agree as follows:

ARTICLE 1 – DBI ADMINISTRATIVE SERVICES

1.1 Plan Administration Assistance

DBI shall assist Employer in the administration of the Plan as provided in this Agreement. DBI's duties with respect to the Plan are limited to those expressly provided for in this Agreement. The benefit plan or plans covered for services under this Agreement are described in RFP 6798-Supply of Administration of IRS Section 125 Flexible Spending Accounts of Medical Care and Dependent Care Services. If a plan is not included in RFP 6798, the plan is not covered for services under this Agreement and DBI shall have no responsibility or duty with respect to such plan.

1.2 Plan Documents Assistance

(a) Upon request, DBI will assist Employer in the establishment and operation of its Plan by providing, for review by Employer, DBI's standard documents, including a plan document, a summary plan description, and other standard documents relating to the administration of a plan.

(b) Employer is under no obligation to use the standard documents from DBI in establishing and maintaining its plan.

(c) DBI's standard plan document, summary plan description, and the other standard documents are based on the legal and regulatory requirements then in effect and on DBI's internal policies and procedures, which may change from time to time.

(d) It is Employer's responsibility to determine whether DBI's standard documents are legally compliant for Employer's purposes, are appropriately completed, are in compliance with the requirements of its Plan, and are appropriately and timely adopted by Employer.

(e) Employer must provide DBI with an executed copy of its plan document.

(f) When there is a change in applicable domestic law or regulation or when requested by Employer due to Employer changing plan design, DBI will provide Employer with its standard plan amendments.

(g) It is Employer's responsibility to determine whether DBI's standard plan amendments or other revisions are legally compliant for Employer's purposes, are in compliance with the requirements of its Plan, are appropriately completed, and are appropriately and timely adopted by Employer.

(h) Employer must provide DBI with an executed copy of its amended plan document.

(i) For the establishment of HRAs, Limited HRAs, and TSAs, DBI provides a prototype plan with an agreement, that once adopted, becomes Employer's HRA, Limited HRA or TSA plan document.

1.3 Recordkeeping

DBI shall assist Employer in the development and maintenance of administrative and recordkeeping systems for the Plan. DBI's recordkeeping services are listed in the Services and Recordkeeping Addendum.

1.4 Information for Employer Disclosure and Plan Reporting

DBI shall provide Employer with general information about disclosure and Plan reporting requirements that relate to the Plan and information reasonably available to DBI that is necessary for Employer to prepare the annual Form 5500. DBI shall not be responsible for the accuracy of any information provided by Employer nor shall DBI be responsible for determining the level of compliance required by the Plan. It is the sole responsibility of Employer to assure compliance with all legal disclosure and Plan reporting requirements.

1.5 DBI Reporting to Employer

DBI shall provide the following reports to Employer:

- Employer Funding Report (daily or monthly – the frequency of this report is dependent on funding method selected)
- Payment History Report (on demand)
- Enrollment Report (monthly and on demand)
- Account Balance Detail Report (monthly and on demand)
- Payroll Deduction Report (frequency based on payroll frequency for auto-post groups)
- Statement of fees due to DBI (monthly invoice)
- Commuter Voucher Report (TSA only)

1.6 Forms

DBI shall provide Employer forms for use in administering the Plan. The forms are available at www.discoverybenefits.com. All forms and all user guide information will be subject to periodic updates and revision. DBI shall also provide Employer instructions and forms for use in the processing of benefit claims under the Plan.

1.7 Plan Payments

Using funds received from Employer, DBI shall pay the amounts due as a result of the operation of the Plan and in compliance with the participant's current Plan elections.

1.8 Claims Processing

(a) DBI shall process claims received from Employer or from Plan participants on a daily basis during regular business hours (6:00 a.m. to 6:00 p.m. Central Time Zone, Monday through Friday excluding holidays).

(b) DBI shall arrange for the payment of approved reimbursement requests as provided in the Plan.

(c) DBI shall consider any initial claim for benefits made under the Plan provided the claim is submitted in accordance with the Plan, the summary plan description, and any reasonable rules established by DBI and communicated to Employer and participants.

(d) DBI will accept or deny (in whole or in part) an initial claim for benefits after making such investigation as it deems necessary.

(e) To the extent DBI determines that a participant is entitled to the claimed benefits under the Plan, DBI will arrange for the proper payment from the Plan using the funds provided by Employer.

(f) To the extent DBI determines that a participant is not entitled to claimed benefits under the Plan, DBI shall provide to such participant a written notification of its decision as soon as administratively practicable after the claim was received by DBI, but no later than within the time required per Section 503 of ERISA (29 USC § 1133) and 29 CFR § 2590.715-2719 as applicable.

(g) Said notification shall comply with the requirements set out in Section 503 of ERISA (29 USC § 1133) and 29 CFR § 2590.715-2719 as applicable.

(h) DBI shall be responsible for making the decision to accept or deny (in whole or in part) all appeals of denied benefit claims consistent with Section 503 of ERISA (29 USC § 1133) and 29 CFR § 2590.715-2719.

(i) DBI shall be responsible for notifying the participant of its decision regarding an appeal consistent with Section 503 of ERISA (29 USC § 1133) and 29 CFR § 2590.715-2719.

(j) In making decisions regarding claims for benefits and appeals of denied benefit claims, DBI shall have discretionary authority to construe and interpret the terms of the Plan and to determine whether a benefit claim is properly payable under the Plan.

(k) Notwithstanding anything herein to the contrary, Employer shall be responsible for all eligibility claims, eligibility appeals, and eligibility determinations.

(l) To the extent that DBI provides written non-English assistance to a participant during the course of claims processing as required by Section 503 of ERISA (29 USC § 1133) and 29 CFR § 2590.715-2719, Employer shall reimburse DBI for the related fees and expenses, if any.

1.9 Claim Fiduciary

DBI has a fiduciary duty under the Plan only to the extent described in Section 1.8. All remaining fiduciary duties under the Plan are the responsibility of Employer.

1.10 Employer Funds and Custodial Account

Funds received by DBI from Employer for the payment of Plan benefits shall be held in the Custodial Account pursuant to Article 3.

1.11 Unused Amounts and Unclaimed Amounts

Except for those amounts that are subject to any Health FSA carryover elected by the Plan in accordance with IRS Notice 2013-71 (as such guidance may be modified or updated), all amounts that remain unused in an FSA or a TSA after the end of the period specified by the Plan during which a participant can make a claim plus any periods for appeal or claim dispute shall be forfeited by the participant and returned to Employer less any undisputed fees and expenses that are due and owing to DBI under this Agreement. The direct terms of an applicable plan may alter the forfeiture provisions of this Section 1.11 only with respect to a Plan participant.

Any amounts unclaimed by participants, including any unclaimed reimbursement checks (or other methods of payment) that have been issued but remain unendorsed or uncashed and unpaid after the end of the plan year's run-out period elected by the Plan, shall be returned to Employer less any undisputed fees and expenses that are due and owing to DBI under this Agreement. Employer shall be responsible to report unclaimed amounts in accordance with the Plan and applicable state law.

1.12 Retention and Release of Plan Data, Records, and Files

(a) DBI shall retain a copy of all information (as information is defined in Section 2.14, excluding emails or similar electronic communications destroyed in the ordinary course of business pursuant to DBI policy) for eight (8) years from the date created at DBI, including, without limitation, a record of all assets and transactions involving the Custodial Account (defined in Article 3).

(b) Following the termination of this Agreement, DBI shall cooperate with Employer or Employer's subsequent service provider to effect an orderly transition of services provided under this Agreement and, within a reasonable time, will release to Employer a copy of all data, records, and files in DBI's standard format.

(c) Upon termination of this Agreement, DBI is entitled to retain a copy of all information including the data, records, and files released by DBI pursuant to Section 1.12(b) and to use and disclose such information for claims, audits, and legal and contractual compliance purposes to the extent permitted by law.

1.13 Notice of Litigation

DBI shall notify Employer promptly of any summons, complaint or other communication concerning threatened litigation and any inquiry by any governmental agency that is related to the Plan unless such notification would be a violation of applicable law.

1.14 Confidentiality of Plan Information

DBI shall keep confidential all information that it obtains concerning the Plan. Other than in due course of business, such information shall not be disclosed without prior approval of Employer or as otherwise provided in Article 4. Employer may request that DBI share Plan information and other data with another vendor of the Plan or Employer. DBI shall consider all reasonable requests, however, prior to releasing or sharing any Plan information or other data with another vendor, Employer must enter into a confidentiality and data sharing agreement with the vendor and make a copy of such agreement available to DBI upon request.

1.15 Disclaimer

DBI does not insure or underwrite Employer's liability to provide benefits under the Plan. DBI shall not be liable or obligated to use its funds for payment of benefits under the Plan, including, without limitation, where such payment of benefits is sought as damages in an action against Employer, DBI or the Plan. Employer shall promptly reimburse DBI for any benefit payments made using DBI funds.

1.16 Audit

(a) During the term of this Agreement, and at any time within six (6) months following its termination, Employer (or a mutually agreeable third party auditor) may audit DBI to determine whether DBI is fulfilling its obligations under this Agreement with respect to processing claims for benefits. The audit shall be limited to such processing claims for benefits information relating to the calendar year in which the audit begins and/or the immediately preceding calendar year. DBI will provide timely inquiry and feedback regarding the sample size and sampling methodology as it relates to the objective of the audit. The audit must be completed within six (6) months following the date the audit begins. The place, time, type, duration, and frequency of any audit must be reasonable and mutually agreeable. Employer shall pay or cause to be paid any expenses that it incurs in connection with the audit, including DBI's then current internal billing rate for audit related tasks.

(b) Any audit will be subject to these additional requirements:

(i) Employer must provide DBI with a sixty (60) day advance written notice of its intent to audit.

(ii) Employer must utilize individuals to conduct the audit who are qualified by appropriate training and experience for such work; who will perform their review in accordance with published administrative safeguards and procedures against unauthorized use or disclosure (in the audit report or otherwise) of any individually identifiable information (including health care information) contained in the information audited; and who will not make or retain any record of payment identifying information concerning treatment of drug or alcohol abuse, mental/nervous disorders, HIV/AIDS or genetic markers in connection with the audit ("Auditor").

(iii) At least thirty (30) days in advance of the commencement of the audit, Employer must provide DBI with a complete and accurate list of the transactions to be selected for audit, along with the specific service for which each transaction or item is being tested. The sample must be based on a statistically valid random sampling methodology (e.g., systematic random sampling, simple random sampling, or stratified random sampling).

(iv) The Auditor must provide its draft findings to DBI before a final audit report is presented to Employer. The draft findings will be the basis for discussion between the Auditor and DBI to resolve any disagreement and to summarize the audit findings.

(v) The Auditor must provide its final audit report to DBI before delivery to Employer and allow DBI to include with the final audit report a supplementary statement containing facts that DBI considers pertinent to the audit.

(vi) The Auditor must provide DBI with a complete copy of the final audit report that is delivered to Employer.

(vii) The audit will be subject to proprietary and confidentiality protections. Before the audit commences, Employer and any third party auditor shall execute a non-disclosure and confidentiality agreement, the scope of which shall be reasonable and shall be determined by DBI.

1.17 Red Flags Rule

For the purposes of this Section 1.17, "Red Flags Rule" means regulation adopted by various federal agencies, including the Federal Trade Commission, in connection with the detection, prevention, and mitigation of identity theft and located at Federal Register Volume 72, Issue 217 (November 9, 2007), as amended.

For the purposes of this Section 1.17, "Covered Services" means the services provided by DBI with respect to the plans selected by Employer and as described in the Debit Card Services Addendum that allow Plan participants to pay for eligible expenses under the Plan with a debit card or other stored-value card and any other services provided by DBI pursuant to this Agreement that fall under the protections of the Red Flags Rule as determined by DBI in its sole discretion.

To the extent applicable, DBI shall comply with the Red Flags Rule with respect to Covered Services.

As part of its Red Flags Rule compliance, DBI shall adopt, maintain, and use appropriate and commercially reasonable rules, procedures, and safeguards to detect and identify red flags and to prevent and mitigate identity theft as required by the Red Flags Rule. Such rules, procedures, and safeguards are set forth in a written program (the "Red Flags Program"). DBI shall, upon request, make available to Employer a copy of its Red Flags Program.

The parties agree that if a breach of unsecured protected health information (as defined in the business associate agreement between the parties) occurs and a violation of the Red Flags Rule occurs with respect to the same incident, both the Red Flags Rule and the provisions of the business associate agreement between the parties shall apply, except that the notice requirements of the business associate agreement between the parties shall satisfy any notice obligations under the Red Flags Rule and this Section 1.17.

1.18 Information Security Program

DBI represents and warrants that it has implemented and maintains a written and comprehensive information security program, and complies with all applicable domestic law and regulation, including, without limitation, state privacy and data security law and regulation such as the Massachusetts Standards for the Protection of Personal Information of Residents of the Commonwealth (201 CMR 17.00).

1.19 Subcontractors

DBI may subcontract or delegate to a third party ("subcontractor") any portion of DBI services. For those DBI services that are subcontracted or delegated: (a) DBI shall ensure subcontractor compliance with all applicable provisions of this Agreement; and (b) DBI shall require the subcontractor not to use subcontractors located outside the United States. Should DBI use any other person or entity to perform any of DBI services as a subcontractor of DBI, DBI shall remain responsible to Employer for the performance of the DBI services under the terms and conditions of this Agreement. For purposes of clarity, any transit authority associated with a TSA shall not be considered a subcontractor of DBI.

1.20 Overpayment Recovery

If DBI determines that it has paid benefits to an ineligible person or paid more than the appropriate amount, DBI shall, with Employer's full cooperation, undertake a good faith effort to recover such erroneous payment. For purposes of this provision, DBI shall have the sole discretion to determine what constitutes a "good faith effort," which effort may vary from time to time depending upon the circumstances of the overpayment, but may include DBI's attempt to contact the participant twice via letter, phone, email or another means about the recovery of the payment at issue.

1.21 Total Authority

Except as otherwise expressly provided in this Agreement, Employer has total control and discretionary authority over the Plan and the manner in which the Plan is operated. DBI serves as Employer's agent only for the processing of qualifying expense/reimbursement requests as provided under this Agreement.

1.22 External Review

To the extent that the external review requirements set forth in 29 CFR § 2590.715-2719 apply to the Plan, DBI shall serve as a conduit for external review requests. Meaning, DBI will send appropriate information to, and cooperate fully with, the external review organization conducting the review. Any cost, fee or expense related to the review or request for review shall be paid by Employer. If DBI pays any such cost, fee or expense on behalf of Employer, Employer shall reimburse DBI promptly upon request.

1.23 Non-Discriminatory Plans – 125 Plans, FSA and HRA Non-Discrimination Testing

Employer may subscribe to DBI's non-discrimination testing portal per the Discovery Tests[tm] Subscription Addendum.

1.24 Direct Load Payments for TSA

Using Plan funds, and based on instructions received from the participant, DBI shall pay employer-provided transportation benefits through electronic media by transmitting funds to a participant's smartcard or account with the transit authority. Only pre-tax participant contributions are eligible for use with the transit authority smartcard. A transactional processing fee could be incurred.

ARTICLE 2 – EMPLOYER RESPONSIBILITIES

2.1 Compliance with Applicable Laws

Plan Compliance. Although DBI serves as Employer's agent for services rendered pursuant to this Agreement, Employer remains responsible for all Plan activities, including compliance with the Patient Protection and Affordable Care Act of 2010 (the "PPACA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Internal Revenue Code (the "Code"), and any other law or regulation, domestic or foreign, as applicable.

Employer Compliance. To the extent allowed by applicable law, Employer agrees to hold DBI harmless from and against any and all liability, damages, costs, losses and expenses (including attorney fees) that result from the failure or alleged failure of Employer, its officers and employees, and any other entity related to or performing services on behalf of Employer (other than DBI) to comply with PPACA, ERISA, HIPAA, the Code, and any other law or regulation, domestic or foreign, as applicable, or the provisions of this Agreement.

Medicare Secondary Payer. To the extent allowed by applicable law, Employer agrees to hold DBI harmless from and against any and all liability, damages, costs, losses and expenses (including attorney fees) that result from the failure or alleged failure of Employer, its officers and employees, and any other entity related to or performing services on behalf of Employer (other than DBI) to provide DBI with the required information for proper and timely reporting under the Medicare Secondary Payer ("MSP") for Employer's HRA participants where DBI acts as Responsible Reporting Entity ("RRE") for any HRA offered by Employer.

Prior Activity or Occurrence. Employer expressly releases all claims against DBI in connection with any claim or cause of action based on any activity or occurrence prior to the Effective Date that results from the failure or alleged failure of Employer, its officers and employees, and any other entity related to or performing services on behalf of Employer to comply with PPACA, ERISA, HIPAA, the Code, and any other law or regulation, domestic or foreign, as applicable.

2.2 Plan Documents

Employer is responsible for the final content of all Plan materials and documents. It is Employer's responsibility to ensure that the Plan documents and any amendments to the Plan documents are legally compliant for Employer's purposes, appropriately completed, in compliance with the requirements of the Plan, and appropriately and timely adopted by Employer. Employer shall file with the appropriate governmental agencies all required returns, reports, documents, and other papers relating to the Plan. Employer shall distribute to its employees participating in the Plan all materials and documents as may be necessary or convenient for the operation of the Plan and to satisfy the requirements of applicable law.

2.3 Summary Plan Description

Employer shall distribute to its employees participating in the Plan a copy of the summary plan description and/or the summary of benefits and coverage.

2.4 Plan Amendments

Employer shall provide DBI with a copy of any contemplated amendment to the Plan no less than thirty (30) days prior to the anticipated amendment effective date (or less than thirty (30) days in the unlikely event in which an amendment is required by law within less than thirty (30) days of the effective date of the amendment). Under no circumstances may Employer adopt an amendment that would alter DBI's services or obligations under the Agreement without prior written consent of DBI. DBI has no obligation to provide any Plan amendments to Employer other than described in Section 1.2.

2.5 Eligibility and Enrollment

Employer shall provide DBI a record of all employees who are eligible to participate in the Plan and notify DBI of any changes on a monthly basis. Employer shall also provide DBI with the demographic and related information that DBI may need to perform its services under this Agreement. Employer shall be solely responsible for determining which of its employees are eligible to participate in the respective plan and to collect the required information from those employees and to inform DBI of such eligible employees. Employer shall be responsible to collect and to provide to DBI, in an electronic format, all reasonably required information to ensure compliance with the MSP rules and regulations where DBI acts as RRE for an HRA offered by Employer.

2.6 Employer Assistance

Employer shall assist in the enrollment of the employees in the Plan, cooperate with DBI regarding the proper settlement of claims, and transmit any inquiries pertaining to the Plan to DBI. Late notification of Plan eligibility or incorrect plan eligibility provided by Employer to DBI may result in erroneous plan benefit payments, for which Employer shall be solely responsible. Employer shall also be responsible for collecting any such erroneous payments from the employee. If there are insufficient Employer funds available to restore the erroneous payments or if the requested reimbursement of funds would otherwise cause the Minimum Account Balance deposit (if applicable) to become insufficient, DBI may suspend all services under this Agreement and request immediate restoration of funds from Employer.

2.7 Funds

Employer shall deposit funds in the Custodial Account to be used to pay benefits and expenses under the Plan as agreed to herein and in accordance with the Plan documents. Funds deposited in the Custodial Account shall consist solely of general assets of Employer. Participant contributions, if any, made by employees to the Plan through salary reduction or otherwise, shall be used to reimburse Employer for the funds advanced by Employer to pay benefits under the Plan. Employer has the sole responsibility and liability for the funding of all benefits under the Plan.

2.8 Claims Based Funding Method

If Employer selects the claims based funding method to pay claims, Employer gives DBI approval to withdraw applicable amounts from Employer's designated United States bank account to deposit in the Custodial Account from which disbursements can be made on Employer's behalf for payment of qualifying expenses, which are otherwise specified by Employer in its Plan document or as provided for under the Code. Disbursements cannot be made until the amounts are credited to the Custodial Account.

2.9 Contribution Based Funding Method

If Employer selects the contribution based funding method to pay claims, Employer establishes a pre-determined initial deposit amount that will adequately fund the reasonable needs of the Plan to be deposited into the Custodial Account (the "Minimum Account Balance") from which disbursements can be made on Employer's behalf for payment of qualifying expenses. If the deposited amount falls below the Minimum Account Balance, Employer will be notified of the deficiency and will be required to provide additional funds until such time the Minimum Account Balance can be restored. DBI may suspend all services under this Agreement until Employer restores the Minimum Account Balance.

2.10 Debit Card Payments

All participants in a Health FSA, Dependent Care FSA, TSA or a comprehensive HRA shall automatically receive one or more debit cards or similar electronic payment technology, for which the terms of the Debit Card Services Addendum shall control.

2.11 Ownership of Account Assets

All funds from Employer deposited in the Custodial Account remain Employer's general assets. DBI shall be responsible for administering the funds in accordance with the terms of this Agreement. Funds are disbursed from

the Custodial Account by DBI or any of its designees only for an allowable Plan expense as determined by Employer or a representative of Employer (including DBI) or as otherwise required by a court of competent jurisdiction.

2.12 Employer, Employee, and Plan Participant Fraud

Employer is solely responsible for making the Plan whole if fraud is committed against the Plan by its employees, Plan participants or anyone (other than DBI). DBI will assist in pursuing or remedying such fraud using its standard procedures. DBI is solely responsible for repaying the Plan if fraud is committed against the Plan by DBI employees, agents or contractors.

2.13 Plan Fiduciary

(a) Except as provided in Section 1.9, Employer agrees that DBI is not a named fiduciary, or a plan fiduciary under the Plan as such terms are described under ERISA. DBI is not the plan administrator and shall have no power or authority to waive, alter, breach or modify any terms and conditions of the Plan. DBI shall make payments or distributions from the Custodial Account in accordance with the framework of policies, interpretations, rules, practices, and procedures set forth in the Plan, this Agreement, and as otherwise agreed upon or directed by Employer.

(b) Except as provided in Section 1.9, DBI shall neither have nor shall be deemed to exercise any discretion, control or authority with respect to the disposition of Employer funds. Employer agrees that the use of or offset or recoupment of funds in the Custodial Account to pay undisputed fees or other undisputed amounts due to DBI pursuant to this Agreement constitutes an Employer action that is authorized by Employer under this Agreement and agrees that such actions are not discretionary acts of DBI and do not create a fiduciary status for DBI.

(c) DBI agrees that it will perform services on the Plan's behalf as set forth in this Agreement, including any addenda to this Agreement. However, DBI will not undertake any duties or responsibilities, regardless of whether they are set forth in the Plan, if such actions are in violation of any applicable domestic law or regulation.

2.14 Employer Information and Instructions

(a) DBI shall be fully protected in relying upon representations and communications made by or on behalf of Employer in effecting its obligations under this Agreement.

(b) DBI is entitled to rely on the most current information in its possession when providing services under this Agreement.

(c) DBI shall provide the services in accordance with this Agreement based on information that is provided to DBI by Employer.

(d) For this purpose, the term "information" means all data, records, and other information supplied to DBI, obtained by DBI or produced by DBI (based on data, records or other information supplied to, or obtained by, DBI) in connection with performing the services pursuant to this Agreement, regardless of the form of the information or the manner in which the information is provided to DBI.

(e) In engaging DBI to perform the services under this Agreement, Employer has authorized and instructed DBI to implement DBI's standard administrative forms and procedures.

(f) DBI is not responsible for any acts or omissions it makes in reliance upon: (i) the written direction or written consent of Employer; or (ii) inaccurate, misleading or incomplete information received by DBI from Employer.

(g) Employer and DBI agree that if Employer instructs DBI with a specific written request (in a format acceptable to DBI) to provide services in a manner other than in accordance with DBI's standard forms and procedures, DBI may (but need not) comply with such an instruction. This would include any Employer instruction to add a vendor link to the participant's online account. To the extent that DBI complies with such an instruction, Employer and not DBI shall be solely responsible for DBI's action so taken, and Employer agrees to hold DBI harmless from and against any and all liability, damages, costs, losses and expenses (including attorney fees) and expressly releases all claims against DBI in connection with any claim or cause of action that results from or in

connection with DBI complying with Employer's specific written instruction to provide services in a manner other than in accordance with DBI's standard procedures.

(h) Employer is responsible for the integrity of data in the files. Therefore, complete and accurate information from Employer or a vendor on behalf of Employer is required in order for DBI to perform the services set forth herein.

(i) DBI's system is unable to mask the employee identification number ("Employee ID") field, including in reports and the participant's online account. Therefore, if Employer uses the social security number ("SSN") as the Employee ID and requires that DBI set up its systems to use the SSN in the Employee ID field, Employer agrees to hold DBI harmless from and against any and all liability, damages, costs, losses, and expenses (including attorney fees) and expressly releases all claims against DBI in connection with any claim or cause of action that results from or in connection with the use of the SSN as the Employee ID.

2.15 Employer's Electronic Account

If Employer chooses to access the services provided by DBI via an online account or other electronic means ("Employer's Electronic Account"), Employer is solely responsible for:

(a) Designating who is authorized to have access to Employer's Electronic Account;

(b) Safeguarding all of Employer's passwords, usernames, logins or other security features used to access Employer's Electronic Account ("Electronic Account Access");

(c) Employer's use of Employer's Electronic Account under any usernames, logins or passwords;

(d) Ensuring that use of Employer's Electronic Account complies fully with the provisions of this Agreement; and

(e) Any unauthorized access or use of Employer's Electronic Account caused by Employer's actions or inactions, including, without limitation, its failure to safeguard the Employer's Electronic Account or Electronic Account Access.

Employer is solely responsible for the maintenance and routine review of its computing and electronic system usage records (i.e., log files) and the security of its own data, data storage, computing devices, other electronic systems, and network connectivity.

Employer acknowledges and agrees that DBI has no control over and is not liable to Employer, Employer's employees or any other third-party for any consequences, losses or damages resulting from unauthorized access or use of the Employer's Electronic Account as set forth in this Section 2.15.

2.16 Plan Tax Obligations

The Plan and/or Employer on behalf of the Plan is responsible for any state, federal or foreign tax, fee, assessment, surcharge and/or penalty imposed, assessed or levied against or with respect to the Plan and/or DBI relating to the Plan or the services provided by DBI pursuant to this Agreement, including those imposed pursuant to PPACA. This includes the funding, remittance, and determination of the amount due for PPACA required taxes and fees. In the event that DBI is required to pay any such tax, fee, assessment, surcharge and/or penalty on behalf of Employer, DBI shall report the payment to Employer along with documentation of the payment and Employer shall promptly reimburse DBI for the full amount or for Employer's proportionate share of such amount, except as provided in Section 7.10. This reimbursement would be in addition to the fees described in Section 6.1. Employer is at all times responsible for the tax consequences of the establishment and operation of the Plan. Further, the parties agree that DBI does not provide any legal tax or accounting advice to the Plan and/or Employer. DBI is at all times responsible for all the taxes based upon its net income and its property ownership.

2.17 Health Plan Identifier

Employer acknowledges and agrees that DBI does not, and shall not, have any responsibility for obtaining one or more health plan identifiers ("HPID") for the Plan from the Enumeration System identified in 45 CFR § 162.508 or for updating the Enumeration System with respect to the HPID.

2.18 Acknowledgment

Employer acknowledges and agrees that the services provided by DBI pursuant to this Agreement relate to enrollment and disenrollment in the Plan and that these services to the extent permitted under HIPAA shall be deemed to be performed by DBI on behalf of Employer in its capacity as the sponsor of the Plan.

Employer further acknowledges and agrees that DBI may use or disclose enrollment or disenrollment information that it receives from Employer with respect to a particular participant to provide the participant access to additional services at no cost to Employer.

ARTICLE 3 – CUSTODIAL ACCOUNT

3.1 Appointment and Acceptance of Custodian

By signing this Agreement, Employer appoints DBI as custodian of Employer funds for the purposes and upon the terms and conditions set forth in this Agreement, and DBI accepts such appointment and agrees to act as custodian hereunder and to hold any Employer funds received hereunder in accordance with the terms and conditions set forth in this Agreement.

3.2 Custodial Account

DBI maintains one or more depository accounts ("Custodial Account") at Bell Bank ("Bank"), Fargo, North Dakota and holds in such Custodial Account all funds initially received from Employer plus any additional funds that may be received from Employer for Custodial Account from time to time. For administrative convenience and to reduce costs, DBI shall hold funds received from Employer together with similar funds from other employers in a single Custodial Account (or one or more Custodial Accounts as determined by DBI). DBI shall maintain records as to the exact amount of funds attributable to each employer so that each employer has a legal right to the specific amount of its funds held in the Custodial Account (less any applicable fees, costs or expenses as set forth in this Agreement). At all times, the assets comprising each employer's funds in the Custodial Account shall be considered a separate subaccount for purposes of this Agreement. Depending upon the context, the term "Custodial Account" as used herein shall refer to either the separate subaccount for Employer or all of the subaccounts for all employers in the aggregate.

3.3 Employer Funds

DBI and Employer intend and agree that all funds received from Employer for deposit in the Custodial Account shall be comprised of and shall remain Employer's general assets. In no event will funds received from Employer and deposited in the Custodial Account constitute or include participant or employee contributions to employee benefit plans, whether made by salary reduction or otherwise, as those terms have their general meaning under ERISA. Except to the extent that outstanding checks have been written or withdrawals have been made against the Custodial Account balance on behalf of Employer, and subject to Section 6.3, all funds received from Employer and deposited in the Custodial Account may be withdrawn by Employer at any time (less applicable fees, costs or expenses as set forth in this Agreement) and are subject to the claims of Employer's general creditors in the same manner as funds contributed to Employer's ordinary checking accounts. Notwithstanding the foregoing, this Agreement does not alter or eliminate any separate obligation of Employer to fund and maintain the Minimum Account Balance in the Custodial Account as described in Section 2.9.

3.4 Disbursements

DBI shall make payments or distributions from the Custodial Account in accordance with the framework of policies, interpretations, rules, practices, and procedures established by DBI for this purpose and as set forth in the Plan or as otherwise agreed upon or directed by Employer. DBI shall neither have nor shall be deemed to have any discretion, control or other authority with respect to the disposition of Employer funds.

3.5 Interest Earned

Employer acknowledges and understands that from time to time, DBI may receive earnings and interest on the funds held in the Custodial Account and that any such earnings or interest shall be part of DBI's compensation. Employer acknowledges and understands that fees otherwise charged by DBI for services under this Agreement would be greater if DBI did not retain such earnings and interest on these funds. The period during which interest may be earned begins on the date Employer Funds are deposited into the Custodial Account and continues for as long as Employer Funds remain in the Custodial Account. Funds shall be disbursed on a first-in, first-out basis.

3.6 Maintenance of Records

Upon Employer's written request, DBI shall provide Employer with an accounting of all assets and transactions involving the Custodial Account in relation to Employer, including a description of all receipts, payments or disbursements, and other transactions.

ARTICLE 4 – CONFIDENTIAL BUSINESS INFORMATION AND INTELLECTUAL PROPERTY

4.1 General Obligations

For purposes of this Article 4, "confidential business information" shall mean any information identified by either party as "confidential" and/or "proprietary", or which, under the circumstances, ought to be treated as confidential or proprietary, including non-public information related to the disclosing party's business, employees, service methods, software, documentation, financial information, prices, and product plans. Neither DBI nor Employer shall disclose confidential business information of the other party. The receiving party shall use reasonable care to protect the confidential business information and ensure it is maintained in confidence, and in no event use less than the same degree of care as it employs to safeguard its own confidential business information of like kind. The foregoing obligation shall not apply to: (a) any information that is at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving party; (b) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving party; (c) was known to the receiving party at the time of disclosure; (d) was generated independently by the receiving party; or (e) is required to be disclosed by law, subpoena or other process.

DBI may disclose Employer's or the Plan's confidential business information to a governmental agency or other third party to the extent necessary for DBI to perform its obligations under this Agreement or if Employer has given DBI written authorization to do so.

Each party agrees that its obligations contained in this Article 4 apply also to its parent, subsidiary, and affiliated companies, if any, and to similarly bind all successors, employees, agents, and representatives.

4.2 Financial Statements and Audit Information

If Employer requests access to certain financial statements and/or service organization control audit reports or other audit information of DBI for the purpose of reviewing the financial, operating, and business condition of DBI, and DBI agrees to provide such information, Employer's acceptance of or access to such confidential information shall constitute its agreement with the following:

- Employer will maintain the information (whether communicated by means of oral, electronic or written disclosures) in confidence and shall not use the same for its own benefit, or for any purpose other than the furtherance of its review, or disclose the same to any third party.

- Employer may only disclose the information to its own officers, employees, and agents on a need-to-know basis for the purposes of its review.

- If Employer is a state agency or otherwise subject to a freedom of information type statute, the information shall be treated as confidential and exempt from disclosure in accordance with the applicable law and the information contains sensitive proprietary business information and data defined as trade secret information that would not otherwise be publicly available and that disclosure of this information to the public, including DBI's competitors, would likely result in substantial harm to DBI's competitive positions and also contains

confidential supervisory information and personal information relating to directors, officers, and major shareholders of DBI, the disclosure of which would constitute an unwarranted invasion of personal privacy.

4.3 Intellectual Property

All materials, including, without limitation, documents, forms (including data collection forms provided by DBI), brochures, and online content ("Materials") furnished by DBI to Employer are licensed, not sold. Employer is granted a personal, non-transferable, and nonexclusive license to use Materials solely for Employer's own internal business use. Employer does not have the right to copy, distribute, reproduce, alter, display or use these Materials or any DBI trademarks for any other purpose other than its own internal business use. Employer shall use commercially reasonable efforts to prevent and protect the content of Materials from unauthorized use. Employer's license to use Materials ends on the termination date of this Agreement.

Upon termination, Employer agrees to destroy Materials or, if requested by DBI, to return them to DBI, except to the extent Employer is required by law to maintain copies of such Materials.

DBI retains exclusive ownership rights to and reserves the right to independently use its experience and know-how, including processes, ideas, concepts, and techniques acquired prior to or developed in the course of performing services under this Agreement.

4.4 Subcontractors or Third Parties

Notwithstanding anything to the contrary, although DBI remains responsible for the confidentiality obligations as set forth in this Article 4, DBI reserves the right to have this information processed, managed, and/or stored with subcontractors or third parties.

ARTICLE 5 – TERM AND TERMINATION OF THE AGREEMENT

5.1 The term of this Agreement shall commence as of the Effective Date and shall continue for a period of twelve (12) months ("Initial Term").

5.2 This Agreement shall automatically renew for another twelve (12) months at the end of the Initial Term and every twelve (12) months thereafter for a total of forty-eight (48) months after the Initial Term unless terminated pursuant to this Article 5.

5.3 This Agreement may be terminated at any time during the Initial Term or any renewal term by Employer or by DBI without cause and without liability with written notice of the intention to terminate to be effective as of a date certain set forth in the written notice not fewer than sixty (60) days from the date of such notice.

5.4 Except as provided in Section 5.5, all obligations of DBI relating to payment of claims under the Plan will be terminated on the effective date of termination given in the notice, regardless of when the claim for such benefit is incurred.

5.5 This Agreement shall automatically terminate:

(a) If any law is enacted or interpreted to prohibit the continuance of this Agreement, upon the effective date of such law or interpretation;

(b) If any fee for any service provided by DBI to Employer remains unpaid to DBI beyond thirty (30) days past the due date (per applicable state law), upon notification by DBI to Employer in writing that DBI intends to exercise its option to enforce this provision;

(c) If at any time Employer fails to provide funds for the payment of Plan benefits or fails to restore the Minimum Account Balance, upon written notification by DBI; or

(d) If Employer fails to provide the required information in a timely manner to ensure compliance with the MSP reporting required for HRAs.

5.6 If a party is in default under any provision of this Agreement, the other party may give written notice to the defaulting party of such default. If the defaulting party has not used good faith efforts to cure such breach or default within thirty (30) days after it receives such notice or if good faith efforts to cure have begun within thirty (30) days, but such cure is not completed within sixty (60) days after receipt of the notice, the other party shall have the right by further written notice ("Termination Notice") to terminate this Agreement as of any future date designated in the Termination Notice.

5.7 If this Agreement is terminated under Sections 5.3 or 5.5, DBI will cease the performance of services. If, however, the parties agree in writing that this Agreement shall continue while DBI performs services during a run-out period (and upon prepayment for such run-out period if requested by DBI), DBI will continue to process qualifying expense reimbursements and to provide general Plan administration and services with respect to any claims that are received by DBI on or before the run-off period end date. The terms of this Agreement will remain in force and effect during any such run-out period.

5.8 Upon the completion of the termination of this Agreement, DBI will cease the processing of any claims that are received and Employer shall be immediately responsible for all aspects of its Plan, including the processing of all claims, annual reporting, and general plan administration. DBI shall promptly return to Employer any funds in the Custodial Account that have not been used for Plan benefit payments along with any unpaid or other pending payment requests and/or subsequent claims that are received after the end date of any specified run-out period. Such return shall remain subject to the completion of a final accounting of all account activities, as well as the deduction of any undisputed unpaid fees and other expenses under this Agreement or any other agreement between the parties. As necessary, DBI shall have the immediate right to demand and pursue collection of any unpaid fees, reimbursements or other amounts that are due and owing to DBI as of the date of termination under the terms of this Agreement or any other agreement between the parties.

5.9 Within sixty (60) days after the later of the termination of this Agreement or the specified run-out period, DBI shall prepare and deliver to Employer a complete and final accounting and report of the financial status of the Plan as of the date of termination together with all books and records in DBI's possession and control pertaining to the administration of the Plan, all claims files, and all reports pertaining to the Plan.

ARTICLE 6 – COST OF ADMINISTRATION

6.1 Plan Administrative Service Fees

(a) Employer shall pay DBI a fee for its services rendered pursuant to this Agreement in accordance with the fee schedule attached hereto. Fees are invoiced monthly and are due within thirty (30) days of the invoice date. If Employer disputes any portion of the fees invoiced in good faith, Employer shall provide DBI with written notice of any disputed fees together with a complete written explanation of the reasons for the dispute (the "Dispute Notice") within thirty (30) days of the invoice date. The parties shall work together in good faith to reach a mutually agreeable resolution of the dispute identified in the Dispute Notice for a period of ten (10) days following the date of the Dispute Notice. If the parties cannot reach such mutually agreeable resolution, the dispute shall be settled pursuant to the procedures set forth in Section 7.13.

(b) Employer shall have thirty (30) days from the date of the invoice to correct a participant count for credit or refund.

(c) Notwithstanding the foregoing, DBI reserves the right to increase fees at any time based on postal rate or bank fee increases or increased costs due to legislative or regulatory changes, domestic or foreign, actually incurred in performing its services. DBI shall provide Employer with reasonable prior written notice of such increases.

(d) DBI reserves the right to charge fees for the provision of additional services requested by Employer, and with prior written consent of Employer, that were neither included in nor contemplated by this Agreement on the Effective Date.

(e) On or after the Rate Expiration Date noted on the fee schedule, DBI reserves the right to amend the fee schedule with one-hundred and twenty (120) days' advance written notice. If Employer is unwilling to accept the changes to the fee schedule, Employer may terminate this Agreement by providing notice to DBI no later than the effective date of the fee schedule amendment.

(f) Fees quoted assume that DBI standard software and systems will be compatible with Employer's software and systems and with any prior service provider's software and systems so that the services can be readily performed without any modifications or alterations of DBI's software and systems. In the unusual event that costs are incurred by DBI to integrate the DBI Services with Employer's software and systems and/or in migrating the data from the prior service provider to DBI's systems, those costs may be charged separately on a time and materials basis or as otherwise provided under a separate agreement between the parties.

6.2 Non-Party Payment on Behalf of Employer and Compliance with Anti-Rebating Law

Employer represents and warrants that if someone other than Employer is making the payment of DBI's fees on behalf of Employer the making of such payment does not violate any applicable anti-rebating law. Employer agrees to hold DBI harmless and not liable and release it from all liability whatsoever from any and all losses and expenses that may result from a breach of this Section 6.2.

6.3 Past Due Fees

Notwithstanding anything in this Agreement or any other agreement between the parties to the contrary, if Employer fails to pay DBI, any amount (except for amounts subject to a good faith dispute) that is due as a result of the services provided by DBI to Employer under this Agreement or any other Agreement between the parties, DBI shall be permitted to deduct (in accordance with Section 2.13(b)) the undisputed amount from any funds held by DBI that were received from Employer. This right of offset shall be in addition to any other remedies that DBI may have under this Agreement or any other agreement between the parties with respect to such non-payment, including, without limitation, any right to terminate this Agreement or right to recoupment, regardless of whether the past due amount is paid in full as a result of the offset or recoupment rights provided herein.

6.4 Participant Count

Employer represents and warrants the accuracy of the information provided by or on behalf of Employer to DBI regarding the participant count.

The participant count for billing purposes is determined on the last business day of each month. Participants losing eligibility after the first business day of the month are included in the count for that month's billing.

Employee means those employees eligible to participate in the Plan. For the purposes of this Section 6.4, "participants" are those individuals who are eligible for account coverage based on the Employer's plan document, including plan run-out periods, plan carryovers in accordance with IRS Notice 2013-71 and Prop. Treas. Reg. §§ 1.125-1(o) and 1.125-5(c) and Plan grace periods in accordance with IRS Notice 2005-42, 2005-1 C.B. 1204, and Prop. Treas. Reg. § 1.125-1(e).

ARTICLE 7 – GENERAL

7.1 Assignment

This Agreement may not be assigned by either party without the prior written consent of the other unless in connection with a merger, acquisition or sale of all or substantially all of the party's assets and provided that the surviving entity has agreed to be bound by this Agreement and has notified the other party in writing within thirty (30) days of the assignment. The parties shall not unreasonably withhold consent.

7.2 Force Majeure

Notwithstanding anything herein to the contrary, neither party shall be liable or deemed to be in default under or in breach of this Agreement for failure to perform or delay in the performance of any of their respective obligations under this Agreement to the extent that such failure or delay results from any act of God, military operation, terrorist attack, widespread and prolonged loss of use of the Internet, national emergency, government restrictions, or disruption of the financial markets. The affected party shall use all commercially reasonable efforts to remedy any inability to perform under this Agreement.

7.3 Governing Law

This Agreement shall be governed and interpreted by the laws of the State of Texas to the extent such laws are not inconsistent with or preempted by ERISA, the Code or any other applicable federal law. In the event of any conflict of laws, the laws of the State of Texas shall prevail. The parties agree that any claim or action arising from this Agreement can only be brought in the United States District Court for the District of Texas, and both parties consent to such jurisdiction and venue.

7.4 Number

Where the context of this Agreement requires, the singular shall include the plural and vice versa.

7.5 Relationship of the Parties

The parties agree that in performing their responsibilities under this Agreement, they are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partner or joint venture or any association for profit between Employer and DBI.

7.6 Severability

If any provision of this Agreement is found to be unenforceable or invalid, such determination shall not affect any other provision, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein, and the parties will negotiate a mutually acceptable replacement provision consistent with the parties' original intent.

7.7 Successor

In the event of DBI's resignation or inability to serve, Employer may appoint a successor. In such situations, the replacement of DBI shall be considered a termination of this Agreement and the termination provisions of Article 5 shall remain effective and controlling.

7.8 Survival

The provisions of Section 2.1, 2.14, Article 4, 5.6, 5.7, 5.8, 6.2, and Article 7 shall survive the termination of this Agreement.

7.9 Waiver

If either party fails to enforce any right or remedy under this Agreement, that failure is not a waiver of the right or remedy for any other breach or failure by the other party.

7.10 Indemnification

(A) SUBJECT TO THE LIMITATIONS IN SECTION 7.11, DBI WILL BE LIABLE TO AND WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS EMPLOYER AND ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, AND PERMITTED ASSIGNS FROM AND AGAINST ANY AND ALL LIABILITY, DAMAGES, COSTS, LOSSES, AND EXPENSES (INCLUDING ATTORNEY FEES), DISBURSEMENTS, AND COURT COSTS REASONABLY INCURRED BY EMPLOYER IN CONNECTION WITH ANY THREATENED, PENDING OR ADJUDICATED CLAIM, DEMAND, ACTION, SUIT OR PROCEEDING BY ANY THIRD PARTY TO THE EXTENT SOLELY AND DIRECTLY CAUSED BY DBI'S WILLFUL MISCONDUCT, CRIMINAL CONDUCT, MATERIAL BREACH OF THIS AGREEMENT OR VIOLATION OF HIPAA PRIVACY OR SECURITY RULES RELATED TO OR ARISING OUT OF THE SERVICES PERFORMED BY DBI UNDER THIS AGREEMENT.

(b) To the extent permitted by law and except as provided in (a) above, and in addition to the provisions in Sections 2.1, 2.14, and 6.2, Employer will defend, indemnify and hold harmless DBI and its respective officers, directors, employees, agents, representatives, successors, and permitted assigns from and against any and all liability, damages, costs, losses, and expenses (including attorney fees), disbursements, and court costs reasonably incurred by DBI in connection with any threatened, pending or adjudicated claim, demand, action, suit or

proceeding by any third party to the extent solely and directly caused by Employer's willful misconduct, criminal conduct, material breach of this Agreement or violation of HIPAA privacy or security rules related to or arising out of the services performed by DBI under this Agreement.

If Employer is a state agency or otherwise subject to a public entity/political subunit non-indemnification type statute and therefore unable to indemnify under this subsection, DBI shall not be responsible for any injury or damage that occurs as a result of any negligent act or omission committed by Employer, including its agents, employees or assigns.

(c) The party seeking indemnification must notify in writing the indemnifying party within ten (10) business days of any knowledge of any actual action, suit or proceeding (and within a reasonable period of time with respect to any threatened action, suit or proceeding) to which it claims such indemnification applies. Failure to so notify the indemnifying party shall not be deemed a waiver of the right to seek indemnification except to the extent the actions of the indemnifying party have been prejudiced by the failure of the other party to provide notice within the required time period.

(d) In addition to the foregoing, in the event of a legal, administrative or other action arising out of the administration, processing or determination of a claim for Plan benefits, which is filed or asserted against DBI ("Claim Litigation"), DBI may, at its election, select and retain its own counsel to protect its interests. DBI and Employer shall cooperate fully with each other in the defense of Claim Litigation. DBI shall consult with Employer before settling Claim Litigation. DBI shall be responsible for payment of all legal fees and expenses incurred by it in defense of Claim Litigation unless the Claim Litigation is attributable to Employer's actions or inactions. Nothing in this subsection (d) shall prevent DBI and/or Employer from pursuing any rights that such party has under this Section 7.10.

7.11 Limitations of Liability

In no event shall either party be liable to the other for consequential, special, exemplary, punitive, indirect or incidental damages, including, but not limited to, any damages resulting from loss of use or loss of profits arising out of or in connection with this Agreement, whether in an action based on contract, tort (including negligence) or any other legal theory whether existing as of the Effective Date or subsequently developed, even if the party has been advised of the possibility of such damages. In the event the foregoing is found to be invalid, in no event will DBI's liability for such damages exceed the fees paid by Employer for the services in the twelve-month period in which the cause of action occurred. In addition, notwithstanding any other provision in this Agreement to the contrary, the maximum total liability of DBI to Employer shall be limited to direct money damages in an amount not to exceed the dollar amount that is available to cover such liability under the insurance policy or policies provided for in Section 7.12. This is Employer's sole and exclusive remedy. No action under this Agreement may be brought by either party more than two (2) years after the cause of action has accrued.

DBI and Employer expressly agree that the limitations of liability in this Section 7.11 represent an agreed allocation of the risks of this Agreement between the parties. This allocation is reflected in the pricing offered by DBI to Employer and is an essential element of the basis of the bargain between the parties.

7.12 Insurance

During the term of this Agreement, DBI shall maintain general liability insurance and professional/cyber liability insurance with policy limits of not less than $5,000,000 per occurrence and in the aggregate for the purpose of providing coverage for claims arising out of the performance of its services under this Agreement. Upon request, DBI shall provide Employer with a certificate of insurance reflecting the general liability insurance coverage.

DBI shall maintain a fidelity bond (or an insurance policy similar to a fidelity bond) for DBI and any of its employees who may collect, disburse or otherwise handle or have possession of any funds provided by Employer or who may have the authority to order disbursements or payments on behalf of the Plan.

7.13 Mediation and Arbitration of Disputes

Excluding equitable relief and all matters pertaining to the collection of amounts due to DBI arising out of the services provided, the parties agree that any dispute arising out of or related to this Agreement may be submitted to a mutually agreed upon American Arbitration Association ("AAA") mediator for non-binding confidential mediation in

a location mutually agreeable between the parties. If the dispute cannot be resolved through the dispute resolution process or mediation, it may be submitted to final, binding, and confidential arbitration before AAA in a location mutually agreeable between the parties before one (1) arbitrator. If the parties cannot agree on an arbitrator within fourteen (14) days, then the parties may request and accept an arbitrator selected by AAA.

7.14 Waiver of Jury Trial

Each of the parties hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, provided, however, that for judicial economy purposes, if a party desires to implead or otherwise add the other party to a third party claim and such third party claim is already a jury trial, the foregoing waiver of jury trial shall not apply. It shall also not apply in any criminal case without the written consent of the defendant.

7.15 Notice

Any notice required or permitted to be given under this Agreement shall be deemed delivered to the address set forth in this Agreement or such other physical or electronic address as specified by the party: (a) when received if delivered by hand; (b) the next business day if placed with a reputable express carrier for delivery during the morning of the following business day; (c) three (3) days after deposit in the U.S. mail for delivery, postage prepaid; or when received if delivered electronically. DBI: 4321 20th Avenue South, Fargo, ND 58103, Attention: Chief Compliance Officer.

7.16 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and understandings regarding the subject matter hereof, whether written or verbal. Any amendment to this Agreement must be in writing and consented to by authorized representatives of both parties. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, permitted assigns, and successors in interest. Nothing express or implied in this Agreement is intended to confer, and nothing herein shall confer upon any person other than the parties hereto, any rights, remedies, obligations or liabilities whatsoever.

7.17 Counterparts

Any number of counterparts of this Agreement may be signed, delivered, and transmitted electronically, each of which shall be considered an original and all of which, together, shall constitute one and the same instrument.

SERVICES AND RECORDKEEPING ADDENDUM

Services and Recordkeeping	
Adjudicate FSA, HRA and Parking reimbursement requests	Included
Administration for 2 ½ month grace period extension, if applicable	Included
Automatic email to participant when claims received and reimbursement is made	Included
Claims Based or Deduction/Contribution Based	Included
Daily processing of reimbursement requests	Included
Debit card	Included
Employee group meetings	Additional fee
IIAS compliant debit card	Included
Issue direct deposit to participant savings or checking accounts	Included
Issue reimbursement checks to participants	Included
Maintain and update employee FSA/HRA/TSA records	Included
Online enrollment presentation (Health FSA and Dependent Care FSA Only)	Included
Plan design and set up	Included
Postage for standard mailings	Included
Process claims during plan year run-out period	Included
Reconcile records to employer's payroll, if applicable	Included
Retain records for 8 years from the date the record is created at DBI	Included
Web enrollment	Included
Reporting and Communication – Employer	
Consult on interpretation of applicable United States law	Included
Daily, weekly, and/or monthly reporting available on status of account balances	Included
Employer Administrative Guide	Included
LEAP® by Discovery Benefits	Included
Reporting and Communication – Participant	
Account balance statement sent 60 days prior to end of plan year (FSA Only)	Included
Communication concerning ineligible claims	Included
Employee Administrative Guide	Included
Enrollment Materials	Included
Online access to account information 24/7	Included
Quarterly emailed statements to participants	Included
Statement included with each reimbursement check	Included
Toll-free customer service line Central Time Zone Monday through Friday Clients 7:00 a.m. to 7:00 p.m. Participants 6:00 a.m. to 9:00 p.m. In compliance with United States federal and state law, DBI may monitor and/or record calls that are made to and from the customer service line for quality assurance and training purposes and/or to ensure that DBI's services fully comply with the terms of the Agreement.	Included
Compliance	
Generic sample plan document (Section 125, FSA and HRA only)	Included
Generic sample plan document and summary plan description updates	Included
Generic sample summary plan description	Included
Information for annual 5500 Filing (Health FSA and HRA)	Included
Discovery Tests™ non-discrimination testing (cafeteria plan, FSA, HRA, self-insured medical plan)	Additional fee may apply

DEBIT CARD SERVICES ADDENDUM

To the extent that debit cards are used for the reimbursement accounts, the following applies with respect to the debit card services:

1 Definitions for the purposes of this Addendum:

1.1 "Card Transaction" means the presentation of the debit card for payment of Qualified Services.

1.2 For a Health FSA and/or HRA account, "Qualified Services" means any and all related goods and services within the meaning of the term "medical care" or "medical expense" as defined in Internal Revenue Code Section 213 (26 USC § 213) and the rulings and Treasury regulations thereunder to the extent that such goods and services are allowable for the Account in question.

1.3 For a TSA account, "Qualified Services" means parking, transit passes, and commuter highway vehicle, within the meaning of Internal Revenue Code Section 132(f) (26 USC § 132(f)) as it relates to qualified transportation plans.

1.4 "Account" means the FSA, TSA and/or HRA, as the context requires and as elected by Employer as part of the Agreement.

1.5 "Employee" means those employees eligible to participate in the Plan.

1.6 Plan participants or "Participant" means Employees who are entitled to account coverage based on the Employer's plan document.

2 General Provisions of Debit Card Services

2.1 DBI is responsible to provide debit card services to Participants, including:

Updating Participant records;

Maintaining accurate account balances and deposit information;

Activating and deactivating the debit cards;

Canceling the debit cards;

Responding to Participant inquiries; and

Providing appropriate notices of actions taken.

2.2 DBI agrees to reasonably ensure compliance with proper use of the debit card and take whatever action is necessary to investigate and resolve errors in Card Transactions that are asserted by Participants within five (5) business days of notice of an assertion.

2.3 DBI agrees to cancel access to a Participant's account when a debit card is reported as lost or stolen.

2.4 DBI agrees to deactivate a Participant's debit card upon notice from Employer of ineligibility or termination. If Employer fails to provide notice, Employer will be responsible for any ensuing Card Transactions.

2.5 DBI will make available to Employer, for distribution to the Participants, information as to the proper use of the debit card.

2.6 Employer acknowledges that it must, in accordance with applicable law, facilitate an after-tax payroll deduction in those instances where the debit card was used to pay for an ineligible expense and the participant failed to reimburse the Plan or the ineligible expense could not be offset with an eligible expense.

2.7 Employer agrees to notify DBI immediately upon suspicion or confirmation of inappropriate or fraudulent debit card use.

2.8 The liability for payment of claims falls on Employer or the Participant. Additional Card Transaction costs, if any, are paid by Employer or Participant, unless solely and directly cause by DBI and/or their agents and contractors

2.9 DBI standard administrative procedures may be different for Card Transactions with respect to a health FSA, TSA, and HRA and with respect to a group or groups of Card Transactions.

3 Settlement Provisions of Debit Card Services

3.1 Employer has, in conjunction with this Agreement, executed and delivered to DBI an Authorization Agreement for Automated Clearing House (ACH) Direct Payments, which authorizes the issuer of the debit cards ("Issuer") to debit the account of the depository financial institution designated by Employer in said Agreement ("Account") as more fully set forth therein.

3.2 Each business day, Issuer is authorized to debit Employer's Account in the amount required to settle all Card Transactions ("Daily Settlement Amount") and the collected and available funds in Employer's Account must be greater than or equal to the Daily Settlement Amount for the previous business day.

3.3 Employer shall reimburse/pay Issuer for all Card Transactions irrespective of whether any authorization for a Card Transaction was made in accordance with the terms of the Plan.

3.4 If Employer fails to fund the Account to settle with Issuer for Card Transactions, fails to reimburse/pay Issuer for all Card Transactions, or breaches its obligations to Issuer, Issuer may, at its option, suspend or terminate all debit cards or change the method by which Employer may settle with Issuer for Card Transactions.

3.5 Employer acknowledges that Issuer is not a party to the Agreement and Issuer has no obligation or responsibility to process and or adjudicate benefit claims. Issuer's function is to issue debit cards and to make settlements arising from Card Transactions based solely on the information provided to it by the debit card processor.

4 Miscellaneous Provisions of Debit Card Services

4.1 Card Transactions and direct deposit payments will be settled directly to the Account at the depository financial institution designated by Employer and on record with DBI.

4.2 Changes to Account information must be made via the submission to DBI of a new Authorization Agreement for Automated Clearing House (ACH) Direct Payments.

4.3 Said authorization remains in full force and effect until DBI and Issuer receive written notification to revoke it in such time and manner as to afford DBI, Issuer, and the depository financial institution designated by Employer a reasonable opportunity to act on it.

4.4 Employer acknowledges that the Issuer shall be deemed to be a third party beneficiary with respect to Sections 3 and 4 of this Addendum with full rights to rely upon and enforce the provisions thereof.

4.5 Employer understands and acknowledges that the origination of ACH transactions to the account must comply with the provisions of United States law.

4.6 Unless otherwise stated, all provisions of the Agreement apply to the debit card services.

DISCOVERY TESTS™ SUBSCRIPTION ADDENDUM

Discovery Tests™ is DBI's non-discrimination testing portal available on LEAP®.

To the extent Employer desires to access to Discovery Tests™ for testing one or more of its Plans, the following additional provisions shall apply with respect to non-discrimination testing.

1 DBI Non-Discrimination Testing

1.1 Plan Testing

The benefit plan or plans covered for services are limited to Premium Only Plan (POP), Premium Only Plan and Flexible Spending Account (POPFSA), Health Reimbursement Arrangement (HRA), and/or Self-Insured Medical Plan (SIMP), for which DBI provides access to Discovery Tests™ (individually and collectively, as the context may require, all of the foregoing shall be referred to as the "Plan").

1.2 Test Templates

DBI provides Employer non-exclusive, non-transferable, non-assignable right to access and use of Discovery Tests™.

1.3 Non-Discrimination Testing Report

DBI provides a final testing report with test results and recommendations for correcting failed tests. The report is made available through Discovery Tests™, which is a tool designed to help Employer evaluate Employer's compliance with applicable domestic law and regulation.

1.4 Template Information Retention

DBI deletes the data inputted or uploaded into Discovery Tests™ and the resulting completed templates ten (10) calendar days after submission by Employer.

1.5 Report Retention

DBI retains the testing report for eight (8) years from the date the report is created under this Addendum.

1.6 Disclaimers

All templates are subject to periodic updates and revision.

DBI does not insure or underwrite Employer's liability to provide benefits under the Plan or provide services other than those stated in this Addendum.

DBI is not liable nor will DBI use its own funds for payment of benefits under the Plan, including, without limitation, where such payment of benefits is sought as damages in an action against Employer, DBI or the Plan.

2 Employer Responsibilities

2.1 System of Records

Employer's HRIS/payroll system is the system of record for non-discrimination testing information. Employer must provide DBI with the information necessary to perform the standard non-discrimination testing services and in the file format required by DBI.

2.2 Compliance

It is the sole responsibility of Employer to assure compliance with all legal reporting and disclosure requirements, including non-discrimination testing rules.

2.3 Authorized Users

Employer shall not make Discovery Tests[tm] available to any person or entity other than its authorized users. Employer shall maintain a written, current list of authorized users and shall provide the list to DBI upon request.

2.4 Protection of Discovery Tests[tm]

Employer agrees to take all reasonable steps to protect Discovery Tests[tm] from unauthorized copying, possession, access or use. Upon Employer becoming aware of any such unauthorized copying, possession, access or use, Employer shall promptly notify DBI and assist DBI in preventing the recurrence thereof, and cooperate with DBI in any litigation or proceedings reasonably necessary to protect the rights of DBI.

2.5 Secure Passwords

Employer shall ensure that each authorized user maintains the secure password for its use of the testing portal and keeps its password confidential. Employer shall immediately notify DBI of any compromise of any secured password of any authorized user, and shall cooperate with DBI in any manner deemed reasonably necessary by DBI to protect its rights.

2.6 Viruses and Improper Materials

Employer shall not access, store, distribute, upload, or transmit any viruses, or any material during the course of its use of Discovery Tests[tm] that is unlawful, harmful, threatening, defamatory, libelous, obscene, infringing, harassing or racially or ethnically offensive; promotes or facilitates any unlawful activity; depicts sexually explicit images; discriminates on the basis of nationality, race, gender, color, religious belief or other characteristic protected by applicable law; or causes damage or injury to any person or property.

2.7 Employer Data

Employer owns all right, title and interest in and to and is solely responsible for the reliability, integrity, accuracy, quality and lawfulness of data inputted and/or uploaded into Discovery Tests[tm]. DBI has no obligation to back up or archive any data and Employer is solely responsible therefor.

2.8 Test Results

Employer acknowledges that any reports, test results, and any and all other information that Employer obtains as a result of using Discovery Tests[tm] is based solely on the data of Employer and/or its authorized users provided by or on behalf of Employer; DBI is not liable for any inaccuracies or invalid results or reports based on such data; and Employer expressly assumes all risk and liability with respect to its use and interpretation of such reports, results, and other information obtained from Employer's use of Discovery Tests[tm]. Although Discovery Tests[tm] is a tool designed to help Employer evaluate Employer's compliance with applicable domestic law and regulation, all legal, regulatory and administrative matters related in any way to Employer, its data, authorized users or its Plan, and the compliance of any of the foregoing with applicable domestic law, are the sole responsibility of Employer and DBI has no liability or responsibility therefor. Employer further acknowledges and agrees that DBI does not provide legal or tax advice with respect to these matters and that Employer must obtain its own legal and tax advice pertaining in any way to such matters.

2.9 Employer Systems

Employer is solely responsible for the maintenance and routine review of its computing and electronic system usage records (i.e., log files) and the security of its own data, data storage, computing devices, other electronic systems, and network connectivity.

2.10 Unauthorized Access

Employer acknowledges and agrees that DBI is not liable to Employer, Employer's employees or any other third-party for any consequences, losses or damages resulting from unauthorized access to or use of its data.

3 Confidential Information and Intellectual Property

3.1 Confidentiality of Employer Data

DBI shall maintain appropriate administrative, physical, and technical safeguards for protection of the confidentiality of Employer data.

DBI shall not disclose any Employer data except as compelled by law in accordance with this Section 3 or as expressly permitted in writing by Employer.

DBI agrees that all Employer data shall be stored on computer servers located within the United States and shall not be transferred to any computer servers located outside of the United States, without the prior written consent of Employer.

3.2 Information Security

Each party agrees to use industry standard current firewall and virus-protection software.

3.3 Remedies upon Breach

Each party agrees that the other party may have no adequate remedy at law if there is a breach or threatened breach of this Section 3 and, accordingly, that either party is entitled (in addition to any legal or equitable remedies available to such party) to seek injunctive or other equitable relief to prevent or remedy such breach.

3.4 Ownership

As between the parties, the parties agree that the confidential information of the other party is, and will remain, the property of such other party. The receiving party obtains no right, title, interest, or license in or to any of the confidential information of the disclosing party except for the rights expressly set forth in this Addendum.

3.5 No Return of Data

Employer acknowledges that DBI has no obligation to maintain Employer data relating to this Addendum. Accordingly, DBI does not return any data to Employer or make any such data available for download by Employer after the termination or expiration of the Agreement.

4 Warranties and Remedies

4.1 Limited Warranties

DBI warrants that Discovery Tests^{tm} will perform materially in accordance with the data submitted and the functionality of Discovery Tests^{tm} will not be materially decreased during the Term.

4.2 Exclusions

Notwithstanding the foregoing, DBI does not warrant, and specifically disclaims, that Employer's access to or use of Discovery Tests^{tm} and the DBI Technology will be uninterrupted or error-free or that the information obtained by Employer through Discovery Tests^{tm} will meet Employer's requirements. Further, DBI is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of Employer data any other data or information over communications networks and facilities, including the Internet, and Employer acknowledges that Discovery Tests^{tm} and the resulting information may be subject to limitations, delays and other problems inherent in the use of such communications facilities. Employer further acknowledges that it is solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to DBI's data center and all problems, conditions, delays, delivery failures, and all other loss or damage arising from or relating to Employer's network connections or telecommunications links or that are caused by the Internet.

4.3 Exclusive Remedies

Employer shall promptly notify DBI in writing of any nonconformity to the functionality described herein. DBI is not obligated to correct any such nonconformity if Employer fails to promptly notify DBI in writing after discovery of the nonconformity, which notice must provide a detailed description of the specific existence and nature of the alleged nonconformity upon Employer's discovery thereof. Provided the nonconformity giving rise to the warranty claim exists, Employer's sole and exclusive remedy in relation to its access to Discovery Tests[tm] and DBI's entire liability for any such conformity is as follows: DBI shall as promptly as practicable, and in any event within thirty (30) days after DBI's receipt of Employer's written notice if applicable, correct such nonconformity or provide Employer with a plan reasonably acceptable to Employer for correcting the nonconformity at DBI's expense and in a reasonably timely fashion. If neither can be accomplished with reasonable commercial efforts from DBI, DBI will notify Employer, whereupon Employer may cancel the Discovery Tests[tm] subscription and return any and all materials and related documentation to DBI. If Employer elects not to cancel the subscription as provided in this Section 4.3, Employer waives all rights for the applicable breach of the warranty set forth herein.

4.4 Disclaimer of Warranty

THE LIMITED WARRANTIES SET FORTH HEREIN CONSTITUTE THE ONLY WARRANTIES WITH RESPECT TO THE SERVICES, DISCOVERY TESTS[tm], AND THE DBI TECHNOLOGY. THE LIMITED WARRANTIES ARE IN LIEU OF, AND DBI SPECIFICALLY DISCLAIMS, ANY AND ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, TITLE, USAGE OR TRADE PRACTICE. UPON ANY INTERRUPTION, DELAY OR FAILURE OF ACCESS TO DISCOVERY TESTS[tm] AND THE DBI TECHNOLOGY, DBI'S SOLE OBLIGATION IS TO USE COMMERCIALLY REASONABLE EFFORTS TO CORRECT THE PROBLEM AND/OR RESUME SUCH ACCESS AS SOON AS PRACTICABLE.

Exhibit I
Senate Bill 252 -Government Code 2252
CERTIFICATION

I, John Biwer, the undersigned representative of Discovery Benefits Inc (Company or business name) being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the City of Denton's Materials Management Department.

John Biwer
Name of Company Representative (Print)

DocuSigned by:
John Biwer
Signature of Company Representative

9/5/2018
Date

Exhibit J
House Bill 89 - Government Code 2270
VERIFICATION

I, John Biwer, the undersigned representative of Discovery Benefits Inc Company or Business name (hereafter referred to as company), being **an adult over the age of eighteen (18) years of age, verify that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:**

1. **Does not boycott Israel currently; and**
2. **Will not boycott Israel during the term of the contract the above-named Company, business or individual with City of Denton.**

Pursuant to Section 2270.001, Texas Government Code:

1. *"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and*
2. *"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.*

John Biwer

Name of Company Representative (Print)

DocuSigned by:
John Biwer
788BD71F9D4B47A...

Signature of Company Representative

9/5/2018

Date

Certificate Of Completion

Envelope Id: 71235009B85E472BA64EF691A654CD9C
Status: Completed
Subject: City Council Docusign Item - 6798 IRS Section 125 Administration
Source Envelope:
Document Pages: 68
Signatures: 7
Certificate Pages: 6
Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Jamie Cogdell
901B Texas Street
Denton, TX 76209
Jamie.Cogdell@cityofdenton.com
IP Address: 129.120.6.150

Record Tracking

Status: Original
9/4/2018 2:34:35 PM
Holder: Jamie Cogdell
Jamie.Cogdell@cityofdenton.com
Location: DocuSign

Signer Events	Signature	Timestamp
Jamie Cogdell jamie.cogdell@cityofdenton.com Senior Buyer City Of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	**Completed** Using IP Address: 129.120.6.150	Sent: 9/4/2018 2:37:04 PM Viewed: 9/4/2018 2:37:23 PM Signed: 9/4/2018 2:38:27 PM
John Biwer jbiwer@discoverybenefits.com President Discovery Benefits Inc Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 9/5/2018 7:56:22 AM ID: 513f5fff-748e-4f2b-bce3-a9fdc35ddcc5	DocuSigned by: John Biwer 788BD71F9D4B47A... Signature Adoption: Pre-selected Style Using IP Address: 192.77.128.11	Sent: 9/4/2018 2:38:30 PM Resent: 9/4/2018 4:21:24 PM Viewed: 9/5/2018 7:56:22 AM Signed: 9/5/2018 7:58:12 AM
Carla Romine carla.romine@cityofdenton.com Human Resources Director Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 9/5/2018 11:41:24 AM ID: 765f859d-55f6-4c0b-9d28-c6802108c5d6	DocuSigned by: Carla Romine 31B899921E48439... Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150	Sent: 9/5/2018 7:58:16 AM Viewed: 9/5/2018 11:41:24 AM Signed: 9/5/2018 11:43:43 AM
Mack Reinwand mack.reinwand@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DocuSigned by: Mack Reinwand 7F9D328BF0204E5... Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150	Sent: 9/5/2018 11:43:47 AM Viewed: 9/5/2018 3:48:01 PM Signed: 9/5/2018 3:50:14 PM

Signer Events	Signature	Timestamp
Tabitha Millsop tabitha.millsop@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	**Completed** Using IP Address: 129.120.6.150	Sent: 9/5/2018 3:50:19 PM Viewed: 9/12/2018 9:35:04 AM Signed: 9/12/2018 9:35:59 AM
Todd Hileman todd.hileman@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Accepted: 7/25/2017 11:02:14 AM ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21	DocuSigned by: Todd Hileman B776C711BA0D454... Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150	Sent: 9/12/2018 9:36:05 AM Viewed: 9/12/2018 10:28:10 AM Signed: 9/12/2018 10:28:14 AM
Jennifer Walters jennifer.walters@cityofdenton.com City Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	DocuSigned by: Jennifer Walters C5BFAFC1821946D... Signature Adoption: Pre-selected Style Using IP Address: 129.120.6.150	Sent: 9/12/2018 10:28:18 AM Viewed: 9/20/2018 9:31:26 AM Signed: 9/20/2018 9:31:55 AM

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Sherri Thurman sherri.thurman@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 9/5/2018 11:43:47 AM Viewed: 9/5/2018 12:57:16 PM
Jane Richardson jane.richardson@cityofdenton.com Assistant City Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 9/12/2018 9:36:03 AM Viewed: 9/12/2018 10:41:22 AM

Carbon Copy Events	Status	Timestamp
Jennifer Bridges jennifer.bridges@cityofdenton.com Procurement Assistant City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 9/20/2018 9:32:01 AM Viewed: 11/1/2018 11:39:53 AM
Jane Richardson jane.richardson@cityofdenton.com Assistant City Secretary City of Denton Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 9/20/2018 9:32:02 AM Viewed: 9/24/2018 10:48:49 AM
Scott Payne scott.payne@cityofdenton.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 9/20/2018 9:32:03 AM Viewed: 9/20/2018 2:46:32 PM

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	9/20/2018 9:32:03 AM
Certified Delivered	Security Checked	9/20/2018 9:32:03 AM
Signing Complete	Security Checked	9/20/2018 9:32:03 AM
Completed	Security Checked	9/20/2018 9:32:03 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

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Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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