



ADMINISTRATION SERVICES ONLY AGREEMENT

This Agreement is entered into by and between HealthSCOPE Benefits, Inc., a Delaware corporation ("TPA"), and Fairfax County Water Authority ("Plan Sponsor") and shall have a commencement date of January 1, 2016 ("Commencement Date"), but shall not become effective until the date of execution by TPA or Plan Sponsor, whichever shall occur last (the "Effective Date").

WHEREAS, Plan Sponsor has established an employee benefit plan (hereinafter referred to as the "Plan") that provides for payment of certain benefits to and for certain eligible individuals as defined by the Plan's master plan document(s), such individuals being referred to herein as "Participant(s)"; and

WHEREAS, the Plan is a health and welfare benefit plan; and

WHEREAS, Plan Sponsor desires for TPA to provide certain administrative services to the Plan and TPA has agreed to provide such services as set forth in this Agreement; and

WHEREAS, Plan Sponsor shall, unless otherwise delegated, serve as the Administrator of the Plan; in no instance shall TPA be deemed to be such Administrator of the Plan; and

WHEREAS, Plan Sponsor issued Request For Proposal RFP#15-02 on March 17, 2015 which is attached as Exhibit A and incorporated by reference herein; and

WHEREAS, TPA submitted a proposal response to RFP#15-02 dated April 21, 2015 which is attached as Exhibit B and incorporated by reference herein, and

WHEREAS, TPA submitted answers to questions of Plan Sponsor submitted on June 11, 2015 which is attached as Exhibit C and incorporated by reference herein, and

WHEREAS, TPA submitted a best and final offer to RFP#15-02 submitted on June 11, 2015 which is attached as Exhibit D and incorporated by reference herein, and

WHEREAS, in order to ensure that all services will be provided beginning on the Commencement Date, Plan Sponsor must return a completely executed copy of this Agreement to TPA within thirty (30) days of presentment by TPA; and Plan Sponsor's failure to sign and return this Agreement within that timeframe may result in TPA, in its sole discretion, exercising either of the following actions: (1) TPA may operate under the terms of this Agreement as if signed by Plan Sponsor, and as if in full force and effect, and Plan Sponsor's continued acceptance of services delineated herein shall be construed as acceptance of the terms contained herein, or (2) TPA may give notice to Plan Sponsor that TPA shall immediately cease to provide services set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

ARTICLE I. SERVICES

CLAIMS ADMINISTRATION SERVICES

SECTION 1. DUTIES OF TPA TPA shall:

- (a) Provide Plan Sponsor with account management.
- (b) Using ordinary care, reasonable diligence, and its standard policies and procedures, review claims incurred by Participants and received by TPA during the term of this Agreement, and determine the benefits payable, if any, on the claim according to the terms of the Plan's master plan document; in performance of these duties, TPA shall be entitled to:

- (i) Rely on any written instructions, communication, information and/or data from Plan Sponsor, including, but not limited to, Participant eligibility and enrollment information provided by Plan Sponsor;
 - (ii) Receive necessary information from Plan Sponsor, Participants, healthcare providers, and any other source in good order and within a reasonable period of time necessary for sorting, processing, inputting and posting of data received;
 - (iii) Arrange to have a medical review conducted, at Plan Sponsor's expense as detailed in Exhibit D, and with Plan Sponsor's prior approval if such expenses are reasonably anticipated to exceed the fees detailed in Exhibit D, if necessary to determine benefits payable under the Plan; and
 - (iv) Deviate at TPA's reasonable discretion from its standard policies and procedures at the written request of Plan Sponsor subject to Plan Sponsor agreeing to pay any additional fees requested by TPA associated with such deviation.
- (c) Make disbursements from the account established by or on behalf of the Plan for the payment of claims, benefits, expenses, and administrative fees under the Plan subject to Plan Sponsor providing sufficient funding.
- (d) Provide an explanation of benefits (EOB) to Participants and healthcare providers, including an explanation for a denial or reduction of any portion of a claim, information required to perfect a claim, and the Plan's review and appeal procedures.
- (e) Maintain a process for receipt of a Participant's appeal of a claim determination such that the appeal is provided to Plan Sponsor for a final decision in accordance with the Plan or other applicable law.
- (f) Respond during normal business hours to routine questions from Participants and healthcare providers regarding benefits under the Plan, eligibility for benefits under the Plan, and claim status; however, in no event shall TPA be liable to reimburse the Participant or any other third party for inadvertent coverage and/or eligibility inaccuracies.
- (g) Provide dedicated customer service team to Plan Sponsor and provide plan participants with a dedicated toll free phone number
- (h) As indicated on Exhibit D and subject to the condition that Plan Sponsor provides TPA with all necessary enrollment and eligibility information, distribute an initial run of TPA's standard identification cards for each covered employee and replace lost cards upon request of Plan Sponsor.
- (i) Upon request of Plan Sponsor and for an additional fee agreed to by the parties, prepare, draft or amend the Plan Document or Summary Plan Description (the written description of the benefits to be provided by the Plan, the terms and conditions under which the Plan shall be operated and the standards and rules governing the payment of benefits under the Plan) as requested or required by Plan Sponsor based on information provided by Plan Sponsor. However, it is expressly understood that documents prepared by TPA shall be reviewed, changed and approved by Plan Sponsor. Regardless of whether Plan Sponsor chooses to secure approval of this/these document(s) by legal counsel, Plan Sponsor shall be solely responsible for any liability as a result of their use, except to the extent such liability results from TPA's negligence or willful misconduct. TPA shall provide such document(s) in a mutually agreed upon format. Plan Sponsor will review such document(s) upon receipt from TPA and promptly notify TPA of any required changes. In the event TPA incurs legal expenses in connection with preparing Plan Sponsor's Plan Document, Summary Plan Description, or amendment(s) thereto, Plan Sponsor agrees to pay all such expenses incurred by TPA, subject to prior Plan Sponsor approval, and except to the extent such expenses arise as a result of TPA's negligence or willful misconduct.
- (j) Prepare on at least a monthly basis standard claims activity reports; TPA may at any time change or eliminate any report or change the frequency in which certain reports are prepared subject to Plan Sponsor approval. Prior approval from Plan Sponsor shall be received prior to any change including an adjustment in price.
- (k) Retain adequate records reflecting claims for benefits, enrollment, and payment for benefits related to the Plan for a period of seven (7) years from the date of receipt in a manner standard within health benefits administration industry; Plan Sponsor will assume the expense of handling and shipping any claim documentation requested by Plan Sponsor.
- (l) Maintain appropriate records regarding claims submitted and corresponding payments for the period required by applicable law, and provide data that may be requested or required by Plan Sponsor for regulatory, audit, and/or other business purposes. This includes:

- (i) Preparing and submitting 1099 forms to the Internal Revenue Service on Plan Sponsor's behalf.
- (m) If in good faith a claim is paid in excess of the amount that should have been paid under the terms of the Plan or an erroneous payment was otherwise made (an "Overpayment") and subject to the savings generating services described herein, use its standard recovery services to attempt to recover such Overpayment; TPA will not be required to initiate court proceedings to recover an Overpayment or to reimburse Plan Sponsor for an un-recovered Overpayment; Plan Sponsor shall not be relieved of its duty to provide sufficient funds to TPA or to make other payments as required under this Agreement as the result of an Overpayment; payment of attorneys' fees and related legal expenses incurred in attempting to recover an Overpayment, if any, shall be the responsibility of Plan Sponsor.
- (n) As requested by Plan Sponsor, obtain quotations, if available, for policies of stop-loss or excess risk coverage; the decision to purchase any such insurance and the selection of coverage type(s), coverage amounts, and the carrier issuing the coverage shall be made solely by Plan Sponsor; TPA may assist Plan Sponsor in evaluating quotations, but makes no representations or warranties regarding the adequacy of any particular coverage or carrier; TPA may receive commissions or other compensation in connection with Plan Sponsor's purchase of such insurance as set forth in Exhibit D.
- (o) If applicable and for an additional fee set forth in Exhibit D, provide tracking and claims filing services with Plan Sponsor's stop loss insurance carrier and provide such stop loss carrier with information reasonably required by the carrier to project liability, make coverage determinations, and issue payment of claims under such coverage; TPA assumes no responsibility or liability for the non-payment or delays in payment of such claims by any insurance carrier for any reason.
- (p) If applicable and upon request of Plan Sponsor for the additional fee set forth in Exhibit D, provide claims filing services with Plan Sponsor's stop loss insurance carrier in an effort to obtain advance funding of specific and/or aggregate claims.
- (q) Upon Plan Sponsor's request, provide Plan Sponsor with a bill for premiums and service fees, as applicable, owed to insurance carriers and other service providers with whom Plan Sponsor has contracted and remit Plan Sponsor's payments to the appropriate carrier or service provider; TPA is not responsible for providing funds for such payments.
- (r) Collect Social Security Numbers ("SSNs") and Health Care Identification Numbers ("HCINs") of Participants and any other data required by the Centers for Medicare and Medicaid Services ("CMS") and file such numbers and data with Medicare in CMS' required format, as such numbers and data are provided to TPA by Plan Sponsor.
- (s) Upon request of Plan Sponsor and for an additional fee agreed to by the parties, TPA will provide other special, non-standard reports, items and services such as:
- (i) Custom identification cards or Plan Sponsor's request for a full replacement run of TPA's standard identification cards;
 - (ii) Assistance as reasonably necessary with enrollment activities, including enrollment meetings;
 - (iii) Mailing of identification cards to Participants' homes;
 - (iv) Custom benefits checks;
 - (v) Custom claim, explanation of benefits, proof of claim or enrollment forms;
 - (vi) Reconciling the banking account(s) described below;
 - (vii) Printing and/or mailing of forms and/or employee educational materials; and
 - (viii) Other as identified on Exhibit D.
- (t) TPA will provide enrollment and eligibility services, issuance of drug cards, billing and collection, stop-loss claim reimbursement and coordination, reporting, and consultation to [Cigna Health and Life Insurance Company ("Cigna")], who shall serve as prescription drug benefits manager ("PBM") hereunder pursuant to a Services Agreement, as amended, between TPA and Cigna dated August 1, 2014. The parties acknowledge and agree that pharmaceutical benefits will be provided hereunder in accordance with the Pharmaceutical Rates and Discount Schedule attached hereto in Exhibit D and incorporated by reference herein.

SECTION 2. DUTIES AND RESPONSIBILITIES OF PLAN SPONSOR Plan Sponsor shall:

- (a) Provide TPA prior to services being provided accurate enrollment and eligibility information regarding all Participants; thereafter, Plan Sponsor will promptly update this information by means agreed to by

the parties, notifying TPA of any and all changes in Participant status, including the addition of new Participants, termination or layoff, changes in dependent status or any other changes that may affect the eligibility of a Participant. Plan Sponsor shall be liable for benefits covered under the Plan incurred prior to TPA processing any enrollment or eligibility change. Plan Sponsor acknowledges delays in promptly providing accurate enrollment and eligibility information may affect, among other things, reimbursement under Plan Sponsor's stop loss insurance policy, if applicable.

(b) Deliver to Participants all Plan information, summary of material modifications, and any other information required by the Department of Labor or any other federal or state governing agency.

(c) Amend the Plan's summary plan description to change benefits under the Plan only upon giving TPA at least sixty (60) days advance written notice of any such change; TPA reserves the right to adjust its administrative fees following any such amendment; programming of any benefit changes shall be done at an additional fee agreed upon by the parties; Plan Sponsor acknowledges that any stop loss insurance maintained by Plan Sponsor may exclude claims paid as a result of any such amendment unless the amendment is approved in advance by the stop loss carrier.

(d) Notify TPA regarding its final determination of any disputed, questionable or appealed claims, claims requiring interpretation of the Plan Document and/or Summary Plan Description, and disputes regarding an individual's eligibility under the Plan.

(e) Provide TPA, in a timely manner, with certain reports and information which are complete and accurate in a form and manner reasonably specified by TPA; such information may include, but may not be limited to: (i) certification that a Participant is eligible for benefits under the Plan; (ii) a description and identification of the types of benefits to which a Participant is entitled; and (iii) date of a Participant's eligibility.

(f) Be solely responsible for funding the payment of benefits, expenses, and administrative fees under the Plan, either through:

- (i) Collection of premiums or contributions from Participants;
- (ii) Purchase of insurance;
- (iii) Payment from its general assets or contributions to a trust, if applicable, the assets of which are used to pay benefits; or
- (iv) A combination thereof.

TPA shall notify Plan Sponsor of the dollar amount necessary to satisfy the Plan's expense obligations, and Plan Sponsor shall remit to TPA within two (2) business days from a trust account and/or Plan Sponsor's general assets the amount necessary to satisfy this obligation.

Nothing in this Agreement shall require TPA to advance funds for the payment of benefits under the Plan nor shall TPA have a duty or responsibility to process any claim if funds are not provided by Plan Sponsor in an amount sufficient to pay for claims and expenses payable under the terms of the Plan. In the event Plan Sponsor fails to satisfy its funding obligation as provided in this Agreement or does not authorize TPA to release checks for pending claims in a timely fashion, TPA may suspend all processing of claims and preparation and release of benefit checks until Plan Sponsor remits sufficient funds to pay such benefits or otherwise authorizes release of checks. If Plan Sponsor fails to remit to TPA the amount necessary to satisfy Plan Sponsor's funding obligation or fails to authorize release of checks for pending claims within ten (10) days after its receipt of notice from TPA of the Plan's expense obligations, TPA may notify Participants and affected healthcare providers in writing of such failure and may forward all inquiries regarding the Plan to Plan Sponsor.

Plan Sponsor authorizes TPA to make disbursements from the account established for the payment of benefits, expenses, and administrative fees incurred under the Plan, including TPA's administrative fees to which it is entitled under this Agreement.

Plan Sponsor acknowledges that in the event the Plan is discontinued or canceled, or in the event of termination of this Agreement, Plan Sponsor is responsible for funding payment of all claims incurred and adjudicated prior to the date of such discontinuance, cancellation or termination.

(g) Notify TPA of any inquiries it receives regarding the activities undertaken by TPA and will assist TPA in any reasonable manner with regard to TPA's obligations under this Agreement.

(h) Within thirty (30) days after receipt of a list from TPA of adjudicated claims, notify TPA in writing of any disagreement with TPA's disposition of an adjudicated claim and request an adjustment of such claim. Until Plan Sponsor notifies TPA of any errors or objections, TPA will be entitled to rely on the information contained in the lists of adjudicated claims. If Plan Sponsor does not notify TPA of any errors or objections within the thirty (30) day period, the information contained in the lists of adjudicated claims will be deemed accurate, complete and acceptable to Plan Sponsor.

- (i) Assist TPA as reasonably necessary in TPA's efforts to recover any Overpayments.

(j) Provide TPA with executed copies of the trust instrument (if applicable), Plan Document and Summary Plan Description, which will, among other things, notify Participants of: (i) benefits provided, (ii) changes in benefits, (iii) the fact the Plan is not insured, (iv) the fact the Participant may be liable for medical expenses if Plan Sponsor does not pay those expenses, (v) the fact TPA does not insure Participant medical expenses, and (vi) Participant having no greater rights or other remedies against TPA than otherwise afforded by law in the event of delays in processing claims.

(k) Retain adequate records reflecting to claims for benefits, enrollment, and payment for benefits related to the Plan for a period of seven (7) years from the date of receipt.

(l) Notify TPA in writing of any change in the Plan benefits a minimum of sixty (60) days prior to the effective date of such change. In the event any such change requires TPA to re-process any claims, it will be done only at an additional fee agreed upon by the parties. Furthermore, in the event the minimum advance notice is not provided, programming of such changes shall be done at an additional fee agreed upon by the parties.

(m) To the extent permitted under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and other applicable law, cause each Participant to authorize the release of medical records and information to TPA as necessary for it to perform its duties and obligations under this Agreement.

(n) Agree that TPA is not liable for the non-payment or delays in payment of claims by any insurance carrier, including, but not limited to, Plan Sponsor's stop loss insurance carrier (if applicable), for any reason.

(o) Timely provide to TPA for each Participant a SSN and HCIN and any other data required by CMS, to enable TPA to file the numbers and other data required by CMS with Medicare on a timely basis.

BANKING ARRANGEMENTS

(a) Plan Sponsor agrees to allow TPA to establish and maintain a bank account in a federally insured bank or savings and loan association as a depository for the funds of Plan Sponsor to be used to make payments under the Plan in a bank mutually agreed upon between TPA and Plan Sponsor, and, if applicable, shall agree in writing upon a method of transferring funds. Plan Sponsor shall be responsible for all fees and expenses imposed by the bank or savings and loan association for establishing and/or maintaining such account. If Plan Sponsor does not agree as such, Plan Sponsor shall establish and maintain a bank account in a federally insured bank or savings and loan association as a depository for the funds of Plan Sponsor to be used to make payments under the Plan in a bank mutually agreed upon by the parties, and, if applicable, shall agree in writing upon a method of transferring funds.

(b) Plan Sponsor shall authorize the applicable bank to recognize signatures of employees of TPA, as designated in writing to Plan Sponsor, for the purpose of drawing checks or drafts on the bank account in an amount adequate to cover such checks or drafts issued by TPA.

(c) TPA shall not be liable to use its funds for benefit payments under the Plan. TPA shall not be considered the insurer or underwriter of the liability of Plan Sponsor or Plan to provide benefits for Participants, and Plan Sponsor shall retain the final responsibility and liability for payment of benefits in accordance with the provisions of the Plan and expenses incident to the operation of the Plan. Plan Sponsor shall be responsible for payment of any overdraft charges caused by properly issued checks or drafts.

(d) TPA shall provide Plan Sponsor a monthly bank reconciliation. Plan Sponsor is responsible for unclaimed processing

NETWORK ACCESS SERVICES

SECTION 1. DUTIES OF TPA TPA shall:

(a) Maintain contracts with various healthcare providers (collectively referred to herein as "Participating Providers") either directly with TPA or through external preferred provider organizations ("PPO") who have agreed to provide certain healthcare services.

(b) Make available the usual and customary services of Participating Providers to Participants in accordance with the terms of this Agreement and TPA's contracts with those Participating Providers in the geographical areas agreed on by the parties. Changes in Participating Providers outside the Effective Date or subsequent Renewal Date may result in a change in the Monthly Administrative Fee.

(c) Make available to Plan Sponsor and Participants via the internet a directory of

Participating Providers; paper directories will be made available upon request of Plan Sponsor for an additional fee agreed upon by the parties.

(d) Determine the appropriate fee based on negotiated rates of all Participating Providers' fees received.

(e) As indicated on Exhibit D, provide Plan Sponsor with identification cards with the applicable healthcare provider network logo(s) for Participants at installation of the group and as necessary thereafter.

SECTION 2. DUTIES OF PLAN SPONSOR Plan Sponsor shall:

(a) Provide funding necessary to compensate Participating Providers for services provided to Participants in a timely manner to allow full compliance with all applicable laws regarding claims processing and payment and all Participating Provider agreements.

(b) Provide in the Plan for minimum financial incentives as required by the selected preferred provider organization network ("PPO") for Participants to utilize the services of Participating Providers and, if an external PPO is accessed by Plan Sponsor's Participants, encourage Participants to use the services of the PPO's Participating Providers through the provision of directories and educational materials.

(c) Abide by the terms of the Participating Provider agreements and, if required by the PPO, enter into a direct contract with the PPO.

(d) Acknowledge that Plan Sponsor shall be liable for providing benefits, funding claims, and/or paying access fees (the "Payer") for "covered services," as that term may be defined in the relevant Participating Provider agreements. Plan Sponsor also acknowledges that under no circumstances shall TPA be the Payer or liable for using its own funds to provide benefits, fund claims, and/or pay access fees, and that Plan Sponsor shall remain the Payer regardless of the entity named as Payer in the Participating Provider agreements. In the event a PPO attempts to hold TPA liable as the Payer for funding claims or paying access fees (a "Dispute"), Plan Sponsor shall acknowledge: (i) TPA is not a provider of healthcare services, TPA does not employ network healthcare providers, Participating Providers are not TPA's agents or partners, TPA's relationship to Participating Providers is that of independent contractors, and network healthcare providers, Participants and their covered dependents are solely responsible for any healthcare services rendered and for all treatment decisions; and (ii) PPOs, if applicable, are not insurers, guarantors or underwriters of the Plan and are not responsible for or liable for the provision of any benefits pursuant to the Plan.

(e) Acknowledge this Agreement does not guarantee, and TPA makes no warranty or representations as to, the availability of healthcare services to Participants from Participating Providers or any other provider of healthcare services.

(f) Acknowledge that, if applicable to Plan Sponsor, the use of specific advance funding through a stop loss insurance carrier may, due to delays in claims payments to healthcare providers awaiting funding from the stop loss insurance carrier, result in the loss of PPO discounts; Plan Sponsor agrees it is responsible for any resulting additional claims payments due to healthcare providers.

(g) Acknowledge that the number, types and particular healthcare providers who are network providers can change at any time and TPA will have no responsibility or liability with regard to such changes. TPA will notify Plan Sponsor of any changes upon receipt of such information from PPO.

(h) To the extent permitted under HIPAA and other applicable law, cause each Participant to authorize the release of medical records and information to TPA as necessary for it to perform its duties and obligations under this Agreement, such release not to jeopardize the confidentiality of the records and information.

(i) Not, in the event Plan Sponsor elects to contract with or access a PPO, hold TPA responsible or liable for PPO's errors.

(j) Acknowledge that Participating Provider fee discounts may be forfeited and Plan Sponsor's access to Participating Providers may be terminated if Plan Sponsor fails to timely fund payment of claims for services provided to Participants by the Participating Providers.

(k) Agree to allow the PPO, if applicable, access to all records regarding the Plan and its Participants in TPA's possession as reasonably necessary for audit purposes, to the extent permitted under HIPAA and other applicable law.

- (l) Agree to maintain the confidentiality of all of the PPO's proprietary information.
- (m) Provide additional compensation to TPA in an amount agreed upon by the parties for any required audit, re-adjudication of claims and/or changes required due to PPO information system data changes performed by TPA.

PHARMACY BENEFITS MANAGEMENT

SECTION 1. DUTIES OF TPA TPA shall assist Plan Sponsor in implementing services provided by the pharmacy benefits manager ("PBM") selected by Plan Sponsor. If requested by Plan Sponsor, TPA shall make available for review by Plan Sponsor any agreements between TPA and PBM.

SECTION 2. DUTIES OF PLAN SPONSOR Plan Sponsor shall:

- (a) Be bound by the terms and conditions of the contract between the selected PBM and TPA.
- (b) Provide funding necessary to compensate the PBM and network pharmacies for services provided to Participants in a timely manner to allow full compliance with all applicable laws regarding claims processing and payment and the PBM contract.
- (c) Acknowledge TPA is not a provider of prescription benefits services, TPA does not employ network pharmacies, neither the PBM nor network pharmacies are TPA's agents or partners, TPA's relationship to the PBM and network pharmacies is that of independent contractors, and network pharmacies, Participants and their covered dependents are solely responsible for any services rendered and for all treatment decisions.

UTILIZATION MANAGEMENT SERVICES

SECTION 1. DUTIES OF TPA TPA shall:

- (a) Review proposed and actual hospital admissions upon request of a healthcare provider or Participant and certify the admission to the extent to which it appears (i) the healthcare services requested (or provided in the case of an emergency admission) are customary under established medical practice for the submitted diagnosis and clinical situation based on the information provided and (ii) the admission for a specified number of days is in accordance with the customary medical practice in connection with such healthcare services.
- (b) Continue to review any admission to determine if a Participant has been discharged within the number of days for which certification was made, and, if not, request justification for the continued stay.
- (c) With each certification of an admission, identify the need for discharge planning and, if appropriate, make recommendations to the Participant's healthcare provider to encourage discharge planning.
- (d) If the service and applicable fee are reflected in Exhibit D, apply established medical criteria to evaluate the need for a second opinion for a proposed surgery and so advise the Participant or the Participant's healthcare provider.
- (e) If the service and applicable fee are reflected in Exhibit D, review proposed outpatient admissions and/or procedures upon request of a healthcare provider or Participant and certify the outpatient procedure to the extent to which it appears that the procedure requested is customary under established medical practice for the submitted diagnosis and clinical situation based on the information provided.
- (f) If the service and applicable fee are reflected in Exhibit D for maternal newborn management, review maternity precertifications in an effort to identify high risk mothers, including referral to case management and education and support of the mother.
- (g) If the service and applicable fee are reflected in Exhibit D for case management services, assess, plan and coordinate the delivery of healthcare services, including the identification of chronic needs, negotiating with healthcare providers, educating the Participant and the Participant's family in the management of medical conditions, identifying for the Participant available community resources, evaluating when a change in the level of healthcare is appropriate.
- (h) If the service and applicable fee are reflected in Exhibit D for population health

management services, provide access to such services through TPA's contracted vendor; such services shall include health evaluation testing and the provision of personalized health profiles on Participants electing to participate in the services.

(i) If the service and applicable fee are reflected in Exhibit D for oncology management services, provide access to such services for Participants electing to participate in the services, through TPA's contracted vendor; such services shall include assistance in determining whether a prescribed course of treatment has been approved by the United States Food and Drug Administration ("FDA") for treating cancer.

SECTION 2. DUTIES OF PLAN SPONSOR Plan Sponsor shall:

(a) Modify the Plan as necessary to conform with the utilization management services provided by TPA under this Agreement.

(b) To the extent permitted under HIPAA and other applicable law, cause each Participant to authorize the release of medical records and information to TPA as necessary for it to perform its duties and obligations under this Agreement.

(c) Agree TPA's actions in providing utilization management services as described herein relate only to whether the proposed healthcare services qualify for benefit eligibility under the Plan.

SAVINGS GENERATING SERVICES

SECTION 1. DUTIES AND RESPONSIBILITIES OF TPA TPA shall:

(a) Attempt to obtain on a case-by-case basis discounts from healthcare provider charges; TPA will attempt to obtain such discounts by either (i) accessing a national or local preferred provider organization ("PPO") other than Plan Sponsor's primary PPO, (ii) accessing a national or local negotiating service, or (iii) directly negotiating with the healthcare provider for a long-term or quick pay discount; in order for TPA to undertake the negotiations of a discount, the healthcare provider's bill must be greater than the minimum allowable amount established by TPA.

(b) If in good faith a claim is paid in excess of the amount that should have been paid under the terms of the Plan or an erroneous payment was otherwise made (an "Overpayment") as a result of (i) Participant and/or healthcare provider fraud, abuse, misrepresentation, or inaccurate billing, (ii) charges from a healthcare provider for services not covered under the terms of the Plan or excessive charges from a healthcare provider discovered through an audit of such healthcare provider's records, or (iii) non-communication or miscommunication of eligibility or coordination of benefits information by a Participant, Plan Sponsor, or other third party, TPA will use its enhanced recovery services to attempt to recover such Overpayment.

(c) Provide Plan Sponsor with regular reports demonstrating the effectiveness of the savings generating services; such reports will demonstrate, among other things, (i) the costs associated with accessing any PPOs and (ii) the direct negotiations with any healthcare provider.

SECTION 2. DUTIES AND RESPONSIBILITIES OF PLAN SPONSOR Plan Sponsor shall:

(a) Promptly fund its Plan, including as necessary to comply with any prompt pay discounts TPA negotiates with a healthcare provider.

(b) Agree to pay TPA the fees stated for Savings Generating Services in Exhibit D.

(c) Agree TPA has no responsibility or liability in the event a healthcare provider refuses to accept a discount TPA attempts to obtain pursuant to the terms of this Agreement and further agree TPA has no responsibility or liability in the event a Participant or their representative refuses to reimburse the Plan pursuant to the subrogation provisions of the Plan.

(d) If required by the negotiating service, enter into a direct contract with the negotiating service.

(e) Not hold TPA responsible or liable for any PPO's errors or delays in carrying out PPO's duties and responsibilities.

(f) Notify TPA of any inquiries Plan Sponsor receives regarding the activities undertaken by TPA.

(g) Authorize TPA to settle any subrogation claim as TPA deems appropriate; however, TPA

shall obtain Plan Sponsor's prior consent before settling any subrogation claim that is reasonable anticipated to exceed five thousand dollars (\$5,000.00).

(h) Agree that any legal expenses or associated costs incurred by TPA in exercising Plan Sponsor's recovery rights under the Plan may be offset against the recovery obtained by TPA.

(i) Hereby expressly authorizes TPA to either withhold from the amounts recovered or savings generated through the savings generating services or withdraw directly from the claims administration account an amount equal to the fees set forth in Exhibit D for payment of its savings generating services; in the event TPA is unable to withhold or withdraw its fee from the recovery or savings generated, TPA will invoice Plan Sponsor pursuant to Article IV.

(j) Agree that in the event of the termination of savings generating services, TPA shall retain all Overpayment recovery files in its possession at the time of such termination for a period of twenty-four (24) months and continue to provide savings generating services and receive reimbursement for those cases in accordance with the terms of this Agreement. Plan Sponsor agrees to provide or require its current third party claim administrator to provide TPA with information necessary for TPA to perform these services during such twenty-four (24) month period.

(k) Assist TPA as reasonably necessary for TPA to perform its savings generating duties and obligations.

SUBROGATION SERVICES

SECTION 1. DUTIES OF TPA TPA shall:

(a) Use its best efforts to identify claims in which Plan Sponsor may have a subrogation interest.

(b) Place the Participant who has filed the claim for benefits in which Plan Sponsor has a subrogation interest on notice of Plan Sponsor's interest and request information regarding the claim, the accident giving rise to the claim, the party or parties responsible for the Participant's injury, and the name of the Participant's attorney or other representative (if applicable).

(c) If applicable, put the Participant's attorney or other representative on notice regarding Plan Sponsor's subrogation claim.

(d) Pursue subrogation claims through negotiations with the Participant, the Participant's attorney or other representative, and/or the party responsible for the Participant's injury; if necessary, coordinate litigation to pursue Plan Sponsor's subrogation claims with an attorney of Plan Sponsor's choice.

(e) Report to Plan Sponsor on a regular basis on the status of open subrogation claims.

SECTION 2. DUTIES OF PLAN SPONSOR Plan Sponsor shall:

(a) Identify for TPA a person or persons that TPA can communicate with to resolve issues with respect to Plan Sponsor's subrogation claims and whose decisions will be binding on Plan Sponsor.

(b) Assist TPA as reasonably necessary for TPA to perform its duties and obligations.

(c) Notify TPA of any inquiries it receives regarding the activities undertaken by TPA.

(d) Authorize TPA to settle any subrogation claim as TPA deems appropriate without obtaining Plan Sponsor's approval.

(e) Agree that any legal expenses or associated costs incurred by TPA in exercising Plan Sponsor's subrogation rights under the Plan may be offset against the recovery obtained by TPA.

(f) Agree TPA has no responsibility or liability in the event a Participant or their representative refuses to reimburse the Plan pursuant to the subrogation provisions of the Plan.

(g) Agree that in the event of the termination of subrogation services by Plan Sponsor, TPA shall retain all subrogation files in its possession at the time of such termination for a period of twenty-four (24) months and continue to provide subrogation services and receive reimbursement for those cases in accordance with the terms of this Agreement. Plan Sponsor agrees to require its third party claim administrator (unless it is TPA) to provide TPA with information reasonably necessary for it to perform these services during such twenty-four (24) month period.

FLEXIBLE SPENDING ACCOUNT CLAIMS ADMINISTRATION SERVICES

SECTION 1. DUTIES OF TPA TPA shall:

- (a) Provide Plan Sponsor with account management.
- (b) Using ordinary care, reasonable diligence, and its standard policies and procedures, review flexible spending account claims incurred by Participants and received by TPA during the term of this Agreement, and determine the benefits payable, if any, on the claim according to the terms of the flexible spending account Plan's master plan document; in performance of these duties, TPA shall be entitled to:
 - (i) Rely on any written instructions, communication and/or information from Plan Sponsor including, but not limited to, Participant eligibility and enrollment information provided by Plan Sponsor;
 - (ii) Receive necessary information from Plan Sponsor, Participants, healthcare providers, and any other source in good order and within a reasonable period of time necessary for sorting, processing, inputting and posting of data received;
 - (iii) Arrange to have a medical review conducted, with Plan Sponsor's prior written consent and at Plan Sponsor's expense, if necessary to determine benefits payable under the flexible spending account Plan; and
 - (iv) Deviate at TPA's reasonable discretion from its standard policies and procedures at the written request of Plan Sponsor subject to Plan Sponsor agreeing to pay any additional fees requested by TPA associated with such deviation.
- (c) Make disbursements from the account established by or on behalf of the flexible spending account Plan for the payment of claims, benefits, expenses, and administrative fees under the flexible spending account Plan subject to Plan Sponsor providing sufficient funding.
- (d) Provide an explanation of benefits (EOB) to Participants, including an explanation for a denial or reduction of any portion of a claim, information required to perfect a claim, and the flexible spending account Plan's review and appeal procedures.
- (e) Maintain a process for receipt of a Participant's appeal of a claim determination such that the appeal is provided to Plan Sponsor for a final decision in accordance with the flexible spending account Plan or other applicable law.
- (f) Respond during normal business hours to routine questions from Participants regarding benefits under the flexible spending account Plan, eligibility for benefits under the flexible spending account Plan, and claim status; however, in no event shall TPA be liable to reimburse the Participant or any other third party for inadvertent coverage and/or eligibility inaccuracies.
- (g) Provide a supply of its standard proof of claim form.
- (h) Upon request of Plan Sponsor and for an additional fee agreed to by the parties, prepare, draft or amend the Plan Document or Summary Plan Description (the written description of the benefits to be provided by the flexible spending account Plan, the terms and conditions under which the flexible spending account Plan shall be operated and the standards and rules governing the payment of benefits under the flexible spending account Plan) as requested or required by Plan Sponsor based on information provided by Plan Sponsor. However, it is expressly understood that documents prepared by TPA shall be reviewed, changed and approved by Plan Sponsor. Regardless of whether Plan Sponsor chooses to secure approval of this/these document(s) by legal counsel, Plan Sponsor shall be solely responsible for any liability as a result of their use except to the extent such liability results from TPA's negligence or willful misconduct. TPA shall provide such document(s) in a mutually agreed upon format. Plan Sponsor will review such document(s) upon receipt from TPA and promptly notify TPA of any required changes. In the event TPA incurs legal expenses in connection with preparing Plan Sponsor's Plan Document, Summary Plan Description, or amendment(s) thereto, Plan Sponsor agrees to pay all such expenses incurred by TPA, subject to prior Plan Sponsor approval.
- (i) Prepare on at least a monthly basis standard claims activity reports; TPA may at any time change or eliminate any report or change the frequency in which certain reports are prepared, subject to Plan Sponsor approval. Prior approval from Plan Sponsor shall be received prior to any change including an adjustment in price.
- (j) Retain adequate records reflecting claims for benefits, enrollment, and payment for benefits related to the flexible spending account Plan for a period of seven (7) years from the date of receipt in a manner standard within flexible spending account administration industry; Plan Sponsor will assume the expense of handling and shipping any claim documentation requested by Plan Sponsor.
- (k) Maintain appropriate records regarding claims submitted and corresponding payments for

the period required by applicable law, and provide data that may be requested or required by Plan Sponsor for regulatory, audit, and/or other business purposes, including furnishing Plan Sponsor upon request data necessary for Plan Sponsor to prepare its own 5500 forms; additional compensation shall be negotiated between the parties where required reporting or disclosure would require TPA to incur additional expenses to collect required information.

(l) If in good faith a claim is paid in excess of the amount that should have been paid under the terms of the flexible spending account Plan or an erroneous payment was otherwise made (an "Overpayment") and subject to the savings generating services described herein, use its standard recovery services to attempt to recover such Overpayment; TPA will not be required to initiate court proceedings to recover an Overpayment or to reimburse Plan Sponsor for an un-recovered Overpayment; Plan Sponsor shall not be relieved of its duty to provide sufficient funds to TPA or to make other payments as required under this Agreement as the result of an Overpayment; payment of attorneys' fees and related legal expenses incurred in attempting to recover an Overpayment, if any, shall be the responsibility of Plan Sponsor.

(m) Upon request of Plan Sponsor and for an additional fee agreed to by the parties, TPA will provide other special, non-standard reports, items and services such as:

- (i) Custom benefit checks;
- (ii) Access to a flexible spending account debit card through TPA's preferred vendor;
- (iii) Custom claim, explanation of benefits, accounting, proof of claim or enrollment forms;
- (iv) Reconciling the banking account(s) described below;
- (v) Printing and/or mailing of forms and/or employee educational materials; and
- (vi) Other as identified on Exhibit D.

SECTION 2. DUTIES AND RESPONSIBILITIES OF PLAN SPONSOR Plan Sponsor shall:

(a) Provide TPA prior to services being provided accurate enrollment and eligibility information regarding all Participants; thereafter, Plan Sponsor will promptly update this information by means agreed to by the parties, notifying TPA of any and all changes in Participant status, including the addition of new Participants, termination or layoff, changes in dependent status or any other changes that may affect the eligibility of a Participant; Plan Sponsor shall be liable for benefits covered under the flexible spending account Plan prior to TPA processing any enrollment or eligibility change.

(b) Deliver to Participants all flexible spending account Plan information, summary of material modifications, and any other information required by the Department of Labor or any other federal or state governing agency.

(c) Not amend the flexible spending account Plan's summary plan description to change benefits under the flexible spending account Plan except upon the anniversary date of this Agreement, unless otherwise acknowledged in advance by TPA; TPA reserves the right to adjust its administrative fees following any such amendment to the extent consistent with such amendment; programming of any benefit changes shall be done at an additional fee agreed upon by the parties.

(d) Notify TPA regarding its final determination of any disputed, questionable or appealed claims, claims requiring interpretation of the Plan Document and/or Summary Plan Description, and disputes regarding an individual's eligibility under the flexible spending account Plan.

(e) Provide TPA, in a timely manner, with certain reports and information which are complete and accurate in a form and manner reasonably specified by TPA; such information may include, but may not be limited to: (i) certification that a Participant is eligible for benefits under the flexible spending account Plan; (ii) a description and identification of the types of benefits to which a Participant is entitled; and (iii) date of a Participant's eligibility.

(f) Be solely responsible for funding the payment of benefits, expenses, and administrative fees under the flexible spending account Plan, either through:

- (i) Collection of premiums or contributions from Participants;
- (ii) Payment from its general assets or contributions to a trust, if applicable, the assets of which are used to pay benefits; or
- (iii) A combination thereof.

TPA shall notify Plan Sponsor of the dollar amount necessary to satisfy the flexible spending account Plan's expense obligations, and Plan Sponsor shall remit to TPA within two (2) business days from

a trust account and/or Plan Sponsor's general assets the amount necessary to satisfy this obligation.

Nothing in this Agreement shall require TPA to advance funds for the payment of benefits under the flexible spending account Plan nor shall TPA have a duty or responsibility to process any claim if funds are not provided by Plan Sponsor in an amount sufficient to pay for claims and expenses payable under the terms of the flexible spending account Plan. In the event Plan Sponsor fails to satisfy its funding obligation as provided in this Agreement or does not authorize TPA to release checks for pending claims in a timely fashion, TPA may suspend all processing of claims and preparation and release of benefit checks until Plan Sponsor remits sufficient funds to pay such benefits or otherwise authorizes release of checks. If Plan Sponsor fails to remit to TPA the amount necessary to satisfy Plan Sponsor's funding obligation or fails to authorize release of checks for pending claims within ten (10) days of its receipt of notice from TPA of the flexible spending account Plan's expense obligations, TPA may notify Participants and affected healthcare providers in writing of such failure and may forward all inquiries regarding the flexible spending account Plan to Plan Sponsor.

Plan Sponsor authorizes TPA to make disbursements from the account established for the payment of benefits, expenses, and administrative fees incurred under the flexible spending account Plan, including TPA's administrative fees to which it is entitled under this Agreement.

Plan Sponsor acknowledges that in the event the flexible spending account Plan is discontinued or canceled, or in the event of termination of this Agreement, Plan Sponsor is responsible for funding payment of all claims incurred and adjudicated prior to the date of such discontinuance, cancellation or termination.

(g) Notify TPA of any inquiries it receives regarding the activities undertaken by TPA and will assist TPA in any reasonable manner with regard to TPA's obligations under this Agreement.

(h) Within thirty (30) days of receipt of a list from TPA of adjudicated claims, notify TPA in writing of any disagreement with TPA's disposition of an adjudicated claim and request an adjustment of such claim. Until Plan Sponsor notifies TPA of any errors or objections, TPA will be entitled to rely on the information contained in the lists of adjudicated claims. If Plan Sponsor does not notify TPA of any errors or objections within the thirty (30) day period, the information contained in the lists of adjudicated claims will be deemed accurate, complete and acceptable to Plan Sponsor.

(i) Assist TPA as reasonably necessary in TPA's efforts to recover any Overpayments.

(j) Provide TPA with executed copies of the trust instrument (if applicable), Plan Document and Summary Plan Description.

(k) Retain adequate records reflecting to claims for benefits, enrollment, and payment for benefits related to the flexible spending account Plan for a period of seven (7) years from the date of receipt.

(l) Notify TPA in writing of any change in the flexible spending account Plan benefits a minimum of sixty (60) days prior to the effective date of such change. In the event any such change requires TPA to re-process any claims, it will be done only at an additional fee agreed upon by the parties. Furthermore, in the event the minimum advance notice is not provided, programming of such changes shall be done at an additional fee agreed upon by the parties.

(m) To the extent permitted under HIPAA and other applicable law, cause each Participant to authorize the release of medical records and information to TPA as necessary for it to perform its duties and obligations under this Agreement.

(n) Provide TPA at least once per quarter with payroll information as is necessary for TPA to carry out its duties and obligations in providing flexible spending account claims administration services.

DATASCOPE® REPORTING SERVICES

SECTION 1. DUTIES OF TPA TPA shall:

(a) Provide TPA's standard quarterly data package (where appropriate claims data is available as determined by TPA) regarding healthcare services provided to Participants by healthcare providers which consists of, but which may not be limited to, an executive summary, financial performances and trends, inpatient hospital cost and utilization trends, and cost associated with the top diagnostic categories.

(b) Analyze healthcare data and information from the data package referenced above and report findings and conclusions to Plan Sponsor.

SECTION 2. DUTIES OF PLAN SPONSOR Plan Sponsor shall:

- (a) Agree that TPA may use the information contained in Plan Sponsor's data for internal studies for the purpose of developing industry comparative standards.
- (b) Cause its third party claims administrator (unless it is TPA) to supply TPA information necessary for TPA to perform its duties and obligations under this Agreement.

ARTICLE II. RELATIONSHIP OF THE PARTIES

(a) For the purposes of this Agreement, any applicable state legislation, Plan Sponsor is the named fiduciary and plan administrator of the Plan; as Plan Administrator, Plan Sponsor or such other individual, entity, or committee appointed by Plan Sponsor maintains sole discretionary authority over the Plan except as otherwise provided herein, including, but not limited to, interpreting the terms of the Plan, determining eligibility for and entitlement to Plan benefits, reviewing and modifying the actions of TPA with respect to the Plan, all reporting and disclosure requirements required by applicable law, and deciding Participant appeals of denied claims. Plan Sponsor shall further be solely responsible for any governmental or regulatory charges, including, but not limited to, premium taxes, provider surcharges, and/or taxes, insolvency fund fees, guarantee fund fees, user fees, licensing fees, and other charges resulting from Plan Sponsor's establishment and operation of the Plan.

(b) Plan Sponsor shall not name TPA as the plan administrator, plan sponsor, or a named fiduciary in any documents applicable to the Plan and shall not hold out to any party, including Participants, that TPA serves in any such capacities.

(c) In performing services under this Agreement, TPA performs all acts as an independent contractor and not as an officer, employee or agent of Plan Sponsor, Administrator (if other than Plan Sponsor), named fiduciary, or Plan.

(d) TPA does not assume any responsibility for any act, omission or breach by a fiduciary or for the adequacy of funding of the Plan, and TPA is not to be deemed a named fiduciary of the Plan or Plan Sponsor or an insurer, underwriter or guarantor with respect to any benefits payable under the Plan. Plan Sponsor has sole responsibility for funding of claims under the Plan and all expenses incidental to the Plan.

(e) The services to be performed by TPA shall be ministerial in nature with respect to the Plan. TPA shall only have those duties and responsibilities with respect to the Plan as are specifically enumerated in this Agreement. Plan Sponsor shall have the right to review and modify any actions of TPA with respect to the Plan. Except as specifically provided herein, TPA shall not have any discretionary authority or control respecting management of the Plan, shall not have the power to interpret ambiguities or conflicts that may exist under the Plan, and shall not have any authority to exercise any control respecting management or disposition of the assets of the Plan, or any authority to invest same.

ARTICLE III. TERM AND TERMINATION

(a) Term. The term of this Agreement will commence on the Commencement Date and will continue for a two- (2) year period ("Initial Term"). Thereafter, it will automatically renew on each anniversary of the Commencement Date for up to three (3) successive periods of one (1) year, (each, a "Renewal Term"), unless otherwise terminated in accordance with the terms of the paragraph (b) below. The Initial Term and each Renewal Term (if any) shall be referred to collectively herein as the "Term." The Term shall in no event exceed a period of five (5) years.

(b) Termination. This Agreement may be discontinued at the earliest time specified below:

- (i) Plan Sponsor shall have the right to terminate the Agreement at its own convenience for any reason by giving seven (7) business days prior written notice of termination to the TPA. In such event, TPA shall be paid an amount equal to the actual cost of any services delivered and accepted by Plan Sponsor. Except for a subcontract to provide network access or utilization management as described in Exhibit D, any subcontract entered into by the TPA in connection with the transactions contemplated hereby shall contain a similar termination provision for the benefit of the TPA and Plan Sponsor. TPA shall in no event be entitled to receive anticipated profits on any services

not yet furnished to and accepted by Plan Sponsor as of the effective date of any such termination.

(ii) Upon expiration of the Initial Term or any Renewal Term by either party with or without cause upon ninety (90) days-prior written notice prior to the end of the then current Initial Term or Renewal Term

(iii) Immediately upon written notice to Plan Sponsor from TPA in the event of Plan Sponsor's failure to provide funds necessary to fund the payment of benefit requests regardless of whether TPA is Plan Sponsor's third party claims administrator; in this event, the termination date shall be deemed to be the last day on which Plan Sponsor provided sufficient funds for payment of benefit requests;

(iv) Immediately upon written notice to Plan Sponsor from TPA in the event of Plan Sponsor's failure to make timely payment to TPA of fees and expenses payable under the terms of this Agreement; in this event, the termination date shall be deemed to be the last day on which Plan Sponsor paid TPA such fees and expenses;

(v) By a party in the event the other party becomes insolvent, or is adjudicated bankrupt, or its business comes into possession, even temporarily, of any trustee in bankruptcy, or a receiver is appointed for it, or it makes a general assignment for the benefit of creditors, or it institutes or causes to be instituted any procedures for reorganization or rearrangement of its affairs;

(vi) If a party materially breaches this Agreement, then the other party may give the breaching party at least thirty (30) days prior written notice of termination of this Agreement, setting forth the breaches in such notice; the termination shall become effective at the conclusion of the notice period if the breaching party fails to cure the breach stated in the notice within the notice period; or

(vii) Immediately upon termination of the Plan.

(c) Termination of Specific Services. Specific services provided under this Agreement (but not all services) may be terminated following the Initial Term by either party with or without cause upon ninety (90) days prior written notice without requiring termination of the entire Agreement. In the event Plan Sponsor elects to terminate a specific service or set of services that accounted for twenty percent (20%) or more of the fees paid by Plan Sponsor during the previous twelve (12) month period, TPA shall have the right to immediately modify Plan Sponsor's rates for the remaining services consistent with such change, and will notify Plan Sponsor of such change. A request from Plan Sponsor for TPA to conduct run-out services shall be subject to the run-out provision in Article V.

(d) Termination of a Specific Location or Group. Specific locations or groups of Plan Sponsor may be terminated following the Initial Term by either party with or without cause upon ninety (90) days prior written notice without requiring termination of the entire Agreement. In such event, TPA shall have the right to immediately modify Plan Sponsor's rates consistent with such change, and will notify Plan Sponsor of such change. A request from Plan Sponsor for TPA to conduct run-out services shall be subject to the run-out provision in Article V. Furthermore, in the event Plan Sponsor reduces the number of employee Participants by fifteen percent (15%) or more, either Plan Sponsor-wide, at a specific location, or for a specific group, TPA shall have the right to immediately modify Plan Sponsor's rates consistent with such change, and will notify Plan Sponsor of such change, including, but not limited to, charging run-out fees as described in the run-out provision in Article V for the reduced Participants.

(e) Continuing Obligations. Termination of this Agreement shall not terminate the rights or liabilities of either party arising prior to such termination. Plan Sponsor acknowledges its financial liability includes claims received by TPA following termination of this Agreement if such claims are received within the claims submission deadlines established in the Summary Plan Description.

(f) Cooperation with Successor. In the event Plan Sponsor appoints a successor to TPA, TPA shall cooperate as reasonably necessary in transferring Plan records, files, and reports in TPA's possession which will be delivered in the format in which they are maintained by TPA, but will include sufficient format explanation and documentation to enable the recipient to have use of the information. Plan Sponsor shall reimburse TPA for all costs reasonably incurred by TPA in providing such records, files, reports and the like, including, but not limited to, the costs of any programming or other changes that may be required as a result of any requests by Plan Sponsor for information.

(g) **Final Financial Report.** If applicable, as soon as reasonably possible after the termination of this Agreement TPA will prepare and deliver to Plan Sponsor a final report as of the date of termination of the financial status and transactions of the Plan and deliver any funds of Plan Sponsor in its possession to Plan Sponsor or to any successor to TPA.

(h) **Run Out Financial Report.** After six months of termination date TPA shall provide financial reporting on run out activity.

(i) **Outstanding Fees.** Upon termination of this Agreement, Plan Sponsor agrees to remit to TPA any outstanding balance due, computer records fees, or any other monies due as specified herein; notwithstanding any other terms of this Agreement, TPA may retain all records, files, and reports of Plan Sponsor and Plan until receipt of all outstanding monies due.

ARTICLE IV. SERVICE FEES

(a) **Fees.** In consideration of the services performed by TPA under this Agreement, Plan Sponsor agrees to pay TPA as set out in Exhibit D and as otherwise provided in this Agreement. Except as otherwise may be reflected in this Agreement, TPA will bill Plan Sponsor each month for services provided under this Agreement and expenses incurred on behalf of Plan Sponsor and Plan, including, if applicable, premiums for stop loss insurance coverage. Plan Sponsor agrees payment is due to TPA upon receipt of the invoice. Plan Sponsor shall pay TPA a late fee of 1% per month for each payment not made within thirty (30) days of Plan Sponsor's receipt of an invoice. Plan Sponsor will permit TPA to audit those records reasonably necessary for TPA to verify the number of employees receiving services pursuant to this Agreement.

(b) **Fee Dispute.** In the event Plan Sponsor disputes an amount of any invoice, Plan Sponsor agrees to pay all amounts not disputed in accordance with Paragraph (a) above, including partial payment of invoices in the event only part of the invoice is in dispute. At the same time Plan Sponsor makes payment on undisputed amounts, Plan Sponsor will notify TPA in writing of any amounts not paid and the nature of the dispute. TPA will provide a written response including all supporting documentation for disputed amounts to Plan Sponsor. TPA and Plan Sponsor agree to use their best efforts to resolve any dispute within thirty (30) days of the date of Plan Sponsor's notification of the dispute.

(c) **Calculation of Fees.** Service fees will be determined on a monthly basis based on the number of Participants for which TPA has record. Plan Sponsor, in requesting a reduction in the number of Participants or a reduction for any other billing discrepancies, must notify TPA in writing within thirty (30) days of Plan Sponsor's receipt of each regular monthly invoice, otherwise, TPA's fee will be as reflected in the invoice.

(d) **Compensation For Delays In Funding.** If Plan Sponsor fails to satisfy its funding obligations for benefits as required under this Agreement, Plan Sponsor agrees to compensate TPA an additional amount equal to 10% of the prior month's administration fees as compensation for the additional work required of TPA due to the funding delay, e.g., responding to inquiries from Participants and healthcare providers and processing duplicate claims.

(e) **Service Charge Modification.** TPA shall have the right to change the service fees set forth in Exhibit D at any time following the Initial Term on giving not less than ninety (90) days prior written notice to Plan Sponsor; provided, however, TPA shall not have the right to unilaterally change the service charges more often than one time per year except as specifically set forth in this Agreement, including, but not limited to:

- (i) The circumstances set out under Article III, Paragraphs (c) and (d) herein arise;
- (ii) Plan Sponsor implements significant changes in plan design that result in an increase in responsibilities or expenses to TPA with regard to those affected services;
- (iii) A change in a provider network access fee for the current term of this Agreement;
- (iv) Plan Sponsor elects to contract with a vendor or stop loss insurance carrier that is not preferred by TPA which results in an increase in responsibilities or expenses to TPA with regard to those affected services; and/or
- (v) In the event laws and/or regulations, including changes in postage rates, are implemented that result in an increase in responsibilities or expenses to TPA with regard to those affected services.

TPA agrees to limit any increase in service fees set forth in Exhibit D to the greater of three percent (3%) or

the percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U); U.S. City Average; Medical Care. The CPI percentage increase will be determined by comparing the percentage difference between the CPI in effect for the month of the Commencement Date, and each December thereafter. The limit described in this paragraph shall not apply to the items specifically listed in Article IV, Paragraph (e), subsections (i)-(v), or to those services not subject to the fee guarantee in Exhibit D.

(f) Implementation Fee. Plan Sponsor agrees to an implementation fee, as stated in Exhibit D, for purposes which may include but are not limited to, purchasing initial supplies and documents, such as identification cards, claims forms, enrollment forms, checks and explanation of benefits forms, and for purposes of loading Plan and Participant eligibility information into TPA's computer system.

(g) Travel Reimbursement. Upon prior written authorization by Plan Sponsor, Plan Sponsor agrees to reimburse TPA for expenses incurred for travel (including, mileage, gas and airfare), meals and lodging of TPA's representative(s) while performing its duties and responsibilities under the terms of this Agreement or at the request of Plan Sponsor. Travel Reimbursement shall not exceed those allowable charges contained in the Plan Sponsor's Travel Policy.

(h) Miscellaneous Expenses of the Plan. Reasonable miscellaneous expenses may be incurred in conjunction with standard operation of the Plan. These expenses include, but are not limited to, bank account set-up fees, wire transfer fees, check printing fees, re-supply of forms, express mail services, printing expenses, medical/dental consulting fees for reviews conducted by TPA staff and/or independent reviewers in order to determine benefits payable under the Plan, medical records fees, code review, PPO contracting, customized and/or additional reporting, and special programming requirements. Plan Sponsor hereby expressly authorizes TPA to withdraw directly from Plan Sponsor's claims administration account an amount equal to the miscellaneous expenses described in this paragraph incurred on behalf of Plan Sponsor in order to reimburse TPA for such expenses. Plan Sponsor shall be notified when such expenses are incurred and those expenses shall be delineated on monthly invoice.

(i) Insufficient Funds. Any check or electronic fund transfer which is returned or refused by Plan Sponsor's bank for insufficient funds ("NSF") will be subject to a \$50 NSF administrative fee per occurrence from TPA.

(j) Payment Default. Notwithstanding any other terms of this Agreement, if Plan Sponsor has defaulted in payment, and has not cured default in payment within ten (10) days from the date of written notice of default from TPA to Plan Sponsor, TPA may elect, by written notice, to immediately terminate this Agreement, and Plan Sponsor shall be liable to TPA for any fees due hereunder for services rendered by TPA prior to the effective date of termination. Plan Sponsor will in no event be responsible for damages, including lost profits, caused by such termination.

(k) Right to Set-Off. Notwithstanding any other terms of this Agreement, if Plan Sponsor has failed to submit payment within sixty (60) days of the date of invoice, Plan Sponsor grants TPA a contractual right to set-off the fees and expenses owed to TPA, as set out in Exhibit D and as otherwise provided in this Agreement. TPA will notify Plan Sponsor thirty days (30 days) prior to making this deduction. Plan Sponsor agrees that TPA's exercise of the contractual right to set-off may include withdrawing funds in an amount equal to any and all fees and expenses, including but not limited to past due fees and expenses which are not in dispute, owed by Plan Sponsor at the date of invoice from any account containing Plan funds on which TPA is a signatory. Plan Sponsor also agrees that TPA shall have no liability for dishonored checks or withdrawals where the exercise of TPA's contractual right of set-off results in insufficient funds in the Plan's account. TPA's rights under this provision are in addition to any other rights and remedies under this Agreement or otherwise.

ARTICLE V. GENERAL

(a) Amendments. Except as specifically provided herein, this Agreement may not be amended without the express written consent of both parties.

(b) Assignment. TPA shall not assign any interest in any resulting Contract and shall not transfer any interest in the same without prior written consent of Plan Sponsor, which Plan Sponsor shall be under no obligation to grant.

(c) Compliance with Laws. Both parties shall comply with all applicable state and federal laws, statutes, regulations, rulings and judicial and administrative orders.

(d) TPA's Indemnification of Plan Sponsor. TPA agrees to indemnify and hold harmless Plan Sponsor, its officers, members, agents, and employees from any claim, liability, cost, loss, expense or

damage (including reasonable attorney and accountant fees) which results from TPA's negligence, willful misconduct or fraud in carrying out its duties pursuant to this Agreement. Plan Sponsor agrees that in no event shall the indemnification obligations of this Subparagraph (d) apply to that portion of any liability, settlement, and related expenses caused by the acts or omissions of any healthcare providers with respect to Participants.

(e) **Confidentiality and HIPAA.** TPA recognizes that it will be provided with personal information regarding Participants of Plan in the course of providing services under this Agreement. TPA will safeguard such information to ensure that no Participant, employees of TPA or any other person who does not need to know such information has access to such information. Plan Sponsor will request TPA to release certain information regarding healthcare services rendered to Participants in the possession of TPA as a result of the services it provides pursuant to this Agreement. Plan Sponsor represents to TPA that it will obtain any written consents from Participants required by law prior to the Commencement Date and any information regarding healthcare services rendered to Participants sought from TPA will be in connection with Plan Sponsor's administration of the Plan and management of Plan assets and not for any purpose prohibited by law. The parties agree to the terms and conditions of the Business Associate Agreement attached hereto as Exhibit E and the Certification of Plan Document Amendment by Plan Sponsor in Exhibit F attached hereto are incorporated herein. To the extent permitted under HIPAA and other applicable law, TPA may use non-individually identifiable information regarding Participants for data compilations and reports, including, but not limited to statistical reports, cost containment analyses, and claims studies as long as TPA does not use or disclose such non-individually identifiable information in any manner other than is necessary to perform its services under this Agreement or as required by law.

(f) **Proprietary Information.** As a result of this Agreement, each party and its respective agents and contractors may have access to information of a proprietary nature owned or licensed by the other, for example without limitation, information regarding the other party's systems, programs, processes, methods, finances, volume of business, manuals, contracts, the reimbursement rates of any healthcare providers contracted either directly or indirectly with TPA, the terms of this Agreement, and any other material specifically labeled as confidential, etc. (referred to herein collectively as "Proprietary Information"). Both parties acknowledge that the Proprietary Information of the other party has great value to the other and, if disclosed or used in violation of this provision, would cause the other party immediate and irreparable harm. Both parties agree to not disclose to anyone or use for their own benefit any Proprietary Information of the other except as required by law (including but not limited to the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700 through 3714), court order, or subpoena, or as otherwise permitted by this Agreement and to take reasonable precautions to prevent disclosure to any third party, except as required by law, court order, or subpoena. The parties agree that upon termination of this Agreement each party shall upon written request promptly return all Proprietary Information of the other party.

(g) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single agreement.

(h) **Governing Law and Legal Action: Waiver of Jury Trial.** Notwithstanding any provision to the contrary, this solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia. Any dispute arising hereunder which is not otherwise resolved by the parties shall be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. TPA and Plan Sponsor hereby waive any right such party may have to a trial by jury in connection with any such litigation.

(i) **Limitation of Liability.** THE SERVICES ARE PROVIDED ON AN "AS-IS" BASIS, AND, EXCEPT AS SET FORTH IN THIS AGREEMENT AND ANY EXHIBITS HERETO, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSES. IN NO EVENT SHALL TPA BE LIABLE FOR LOSS OR USE OF PROFITS, EXPENSES OR COSTS ARISING FROM BUSINESS INTERRUPTIONS, ATTORNEYS' FEES, OR CONSEQUENTIAL, CONTINGENT, INCIDENTAL OR SPECIAL DAMAGES CAUSED OR ALLEGED TO BE CAUSED IN WHOLE OR IN PART AS A RESULT OF THE NEGLIGENCE, TORT, STRICT LIABILITY, BREACH OF CONTRACT, DELAY IN DELIVERY, BREACH OF WARRANTY, OR OTHER BREACH OF DUTY OF OR BY TPA.

(j) **Headings.** The headings of this Agreement are solely for the convenience of the parties and do not affect the meaning or interpretation of any provision of this Agreement.

(k) Notices. Any notice required under this Agreement must be in writing, and either must be personally delivered or mailed by first class mail, or overnight air courier guaranteeing next day delivery to the person at the address written below, or to such other address or to the attention of such other person as the recipient party shall have specified to the sending party by prior written notice. Notices given under this Agreement shall be deemed to have been given: (i) at the time delivered by hand, if personally delivered, (ii) three (3) days after it is deposited in the United States mail, postage prepaid, return receipt requested, if mailed, or (iii) the next business day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

(l) Other Service Providers. The services to be performed by TPA under this Agreement may be performed directly by it or wholly or in part by another organization of TPA's choosing with prior consultation and written approval of Plan Sponsor; upon request TPA will identify to Plan Sponsor who those organizations are, if any.

(m) Ownership of Files and Materials. Plan Sponsor, as Administrator, owns all claims files even though they may be in the possession of TPA. TPA is the sole owner of all claim processing and payment manuals, administrative procedure manuals, data processing system designs and computer programs used in providing its services under this Agreement.

(n) Prior Claims Administrator. In the event TPA is replacing a prior third party claims administrator, TPA accepts no responsibility for the work performed by the prior third party claims administrator; nor does TPA agree to reevaluate or readjust claims or perform work previously done by the prior third party claims administrator unless otherwise agreed upon by the parties for additional compensation.

(o) Run-out and Stop-Loss After Termination. If this Agreement terminates, TPA may, if requested by Plan Sponsor, for a mutually agreed upon time period, under mutually agreeable terms, and for an additional fee to be agreed upon by the parties, continue to adjudicate claims (i) that were in TPA's possession as of the termination date and (ii) claims incurred but not received by TPA during the term of this Agreement. In addition, Plan Sponsor agrees to pay TPA its standard hourly fee for work performed by TPA after termination related to Plan Sponsor's stop-loss or excess risk coverage. Following termination of this Agreement, to the extent that uncashed checks remain outstanding, Plan Sponsor's funding obligations described in this Agreement shall remain in effect for a reasonable period of time as reasonably determined by TPA such that there is adequate funding for checks issued by TPA on Plan Sponsor's behalf as the checks are cashed. After such reasonable period of time as determined by TPA, TPA shall place stop payment orders on checks issued that have not been cashed.

(p) Successor and Assigns. This Agreement shall be binding upon and inure to the benefit of and be enforceable against the parties hereto and their respective successors and assigns.

(q) Taxes and Penalties. If at any time during the operation of the Plan, the federal government or any state or any political subdivision of any instrumentality of either shall assess any tax or penalty against the Plan, or any trust related to the Plan in any way, Plan Sponsor shall be responsible for payment of such tax or penalty. If TPA is required to pay such tax or penalty, TPA shall report the payment of the tax or penalty to Plan Sponsor and Plan Sponsor shall reimburse TPA for such payment.

(r) Use of Name. TPA and Plan Sponsor each reserves the right to and the control of their names, symbols, trademarks and service marks presently existing or later established; in addition, neither TPA nor Plan Sponsor shall use the other party's name, symbols, trademarks or service marks in advertising or promotional materials or otherwise without the prior written consent of that party and shall cease any such usage immediately upon written notice of the party or upon termination of this Agreement, whichever is sooner; by signing this Agreement, each party hereby gives the other limited permission for use of name only for marketing and/or enrollment purposes during the term of this Agreement.

(s) Waiver. The waiver by either party of any breach by the other party of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of this same or of a different provision of this Agreement.

(t) Dispute Resolution. TPA shall give written notice to the Plan Sponsor's Purchasing Agent of his/her intent to file a claim for money or other relief within ten (10) calendar days of the occurrence giving rise to the claim or at the beginning of the work upon which the claim is to be based, whichever is earlier. The written claim shall be submitted to the Purchasing Agent no later than sixty (60) days after final payment. If the claim is not disposed of by agreement, the Purchasing Agent shall reduce his decision to writing and mail or otherwise forward a copy thereof to the bidder within thirty (30) days of receipt of the claim. TPA shall not institute any legal action until all statutory requirements have been met.

Each party shall bear its own costs and expenses resulting from any litigation, including attorney's fees.

(u) **Notice of Complaint/Inquiry.** Plan Sponsor agrees to forward TPA as soon as reasonably possible after receipt by Plan Sponsor all regulatory and attorney communications pertaining to Participants or the administration of the Plan, and other complaints, inquiries, whether oral or written, relating in any way to TPA's obligations under this Agreement.

(v) **Exclusion of Liability.** Plan Sponsor agrees TPA shall be free from any liability, financial responsibility or obligation to Plan Sponsor, Participants, healthcare providers or any other person, corporation or entity for the decisions regarding the necessity or advisability of or the actual provision of any medical treatment, surgery, therapeutic procedure, medicine, drug prescription, care, maintenance, confinement or any other matter relating to the delivery of medical service by any physician, nurse or other provider of healthcare services for any Participant. Plan Sponsor further agrees TPA shall have no duty or responsibility to advance funds for the payment of benefits under the Plan in the event Plan Sponsor fails to provide such funding, nor shall TPA have a duty or responsibility to process any claim if funds are not provided by Plan Sponsor in an amount sufficient to pay for claims and expenses payable under the terms of the Plan.

(w) **Audit Rights.** Plan Sponsor will have the right, upon at least forty-five (45) days prior notice and during normal business hours, to periodically audit, utilizing its own claims and auditing staff, any records of TPA relating to the services provided by TPA under this Agreement; any examination of such records shall be conducted prior to this Agreement's termination in accordance with the procedures mutually agreed to between TPA and Plan Sponsor prior to the audit, which shall include entering into a written agreement as to the parties' rights and duties regarding the audit. Plan Sponsor may designate a representative to conduct the audit and Plan Sponsor shall be responsible for the conduct of such representative during such audit and manner in which such representative uses information disclosed by TPA during the audit. TPA shall be required to supply only such information that is in its possession and which is reasonably necessary for Plan Sponsor to administer the Plan, provided that such disclosure is not prohibited by any third-party contracts to which TPA is a signatory or any requirements of law. Plan Sponsor represents that to the extent any disclosed information contains personally identifiable or health information about a Participant, the Participant has authorized disclosure to Plan Sponsor or Plan Sponsor otherwise has legal authority to have access to such information.

(x) **Solicitation of TPA Employees.** Both parties agree that during the terms of this Agreement and for a period of two (2) years after the termination of this Agreement, Plan Sponsor shall not solicit the services of any past or present personnel employed by TPA during the terms of this Agreement without the prior written consent of TPA.

(y) **Third Parties.** Nothing in this Agreement, express or implied, is intended to confer on any other entity or person (including without limitation any Participant) any rights or remedies under or by reason of this Agreement.

(z) **Severability.** If any provision in this Agreement is held to be invalid or unenforceable, the remaining provisions shall nevertheless continue in full force and effect, unless the provisions held invalid or unenforceable shall substantially impair the benefits of the remaining portions of this Agreement.

(aa) **Force Majeure.** Neither party will be responsible for, nor deemed to be in default under this Agreement on account of any failure or delay in performance hereunder due to acts of God or governmental authority, strikes or labor disputes, fires, weather conditions, failures or fluctuations in electricity, heat, air conditioning, light, or telecommunications, or any other causes beyond the control of the party.

(bb) **Insurance.** Plan Sponsor shall, throughout the term of this Agreement maintain, at its sole cost and expense, policies of insurance or self-insurance providing coverage for its general liability and professional liability with minimum limits of liability of one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the annual aggregate. With the exception of Workers' Compensation and Employers' Liability Insurance, all additional insurance policies specified herein shall name the Plan Sponsor as an additional insured with regard to work performed under any subsequent contract.

(cc) **Appeals.** Plan Sponsor shall make the final decision with regard to an appeal brought in accordance with the terms of the Plan and applicable law by a Participant whose claim has been initially denied, in whole or part. TPA will abide by that decision. If TPA is of the opinion Plan Sponsor's decision is inconsistent with or not supported by the terms of the Plan, TPA may require Plan Sponsor to provide either a conforming Plan amendment or other written directive executed by Plan Sponsor.

(dd) Reliance on Reports. Plan Sponsor will review all reports and/or lists provided by TPA and will notify TPA in writing of any errors or objections within thirty (30) days of receipt. Until Plan Sponsor notifies TPA of any errors or objections, TPA will be entitled to rely on the information contained in the reports and/or lists. If Plan Sponsor does not notify TPA of any errors or objections within the thirty (30) day period, the information contained in the reports and/or lists will be deemed accurate, complete and acceptable to Plan Sponsor.

(ee) Entire Agreement. This Agreement (including all exhibits and attachments hereto) sets forth the full and complete understanding of the parties with respect to the subject matter hereof. This Agreement (including all exhibits and attachments hereto) shall supersede all previous communications, representations, or agreements, either verbal or written, by and between the parties.

(ff) Authorization to Do Business in Virginia - A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with the Plan Sponsor pursuant to the Virginia Public Procurement Act § 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. The Plan Sponsor may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

(gg) Drug-free workplace to be maintained by contractor - During the performance of this contract, TPA agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) use best efforts to include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

(hh) Employment Discrimination By Contractor Prohibited - The following provision is required to be in every contract of more than \$10,000 (Virginia Public Procurement Act, § 2.2-4311.1

A. During the performance of any ensuing contract, TPA agrees as follows:

1. TPA will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. TPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. TPA, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

B. TPA will use best efforts to include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

(ii) Ethics in Public Contracting - TPA hereby certifies that it has familiarized itself with Article 6 of Title 2.2 of the Virginia Public Procurement Act, Sections 2.2-4367 through 4377, Virginia Code Annotated, and that all amounts received by

it, pursuant to a contract resulting from this solicitation, are proper and in accordance therewith.

(j) **Faith Based Organizations** – Plan Sponsor does not discriminate against faith based organizations.

(k) **Immigration and Control Reform Act of 1986** - By entering this Contract, TPA certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

IN WITNESS WHEREOF, TPA and Plan Sponsor have caused this Agreement to be executed in duplicate by their respective officers duly authorized to do so:

FAIRFAX COUNTY WATER AUTHORITY

The undersigned Plan Administrator or other named Fiduciary hereby certifies that s/he (1) is an independent fiduciary authorized to sign on behalf of Plan Sponsor and Plan; (2) acknowledges receipt of this Agreement and has read and understands it; (3) on behalf of the Plan, approves the purchase of insurance (if applicable) and the payments to TPA of such sales commissions, service fees and other compensation arrangements as set forth herein; (4) is not an insurance agent, broker, pension consultant or insurance Plan Sponsor involved in the transaction; and (5) will not receive any compensation or other consideration, directly or indirectly, for his/her own personal account from any party dealing with the Plan in connection with the transaction.

By: 
Signature of Plan Administrator or other named Fiduciary

Name (Print): Charles M. Murray

Title: General Manager

Address: 6570 Executive Park Ave
Fairfax, VA 22031

Date: Aug. 31, 2015

HEALTHSCOPE BENEFITS, INC.

By: 

Name (Print): Joe Edwards

Title: Chief Executive Officer

Address: 27 Corporate Hill Drive
Little Rock, AR 72205

Date: 8-28-15

EXHIBIT A

[Attach Copy of RFP 15-02]



8570 EXECUTIVE PARK AVENUE
FAIRFAX, VIRGINIA 22031

Request for Proposals

Number:	RFP 15-02
Title:	Third-Party Administration Services for Health Plan
Date Issued:	March 17, 2015
Deadline for Questions: March 26, 2015	5:00 p.m., March 27, 2015
Deadline for Submitting Proposals:	2:00 p.m., April 24, 2015
Proposals to Be Delivered to:	Procurement Department Fairfax Water 8570 Executive Park Avenue Fairfax, Virginia 22031
Procurement Contact:	Donald R. Legg, CPPO Procurement Manager Telephone: 703-289- 6261 Facsimile: 703-289-6262 E-Mail: ProclH@fairfaxwater.org

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ATTACHMENT F - SUBSCRIBER GEOGRAPHIC DATA

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SECTION 1

1. SUMMARY INFORMATION

1.1 Introduction and Objective

The Fairfax County Water Authority, doing business as Fairfax Water (FW) was created under the Virginia Water and Waste Authorities Act pursuant to resolutions adopted by Fairfax County on September 26, 1957. FW is managed by a ten member Board of Directors appointed for three-year terms by the Fairfax County Board of Supervisors.

The current contract for TPA services will reach the maximum five year renewal period and expire December 31, 2015. Under the Virginia Public Procurement Act, Fairfax Water is required to issue a Request For Proposals....

The objective of this Request for Proposals (RFP) is to establish a two-year, annually renewable contract for Third Party Administration Services (TPA) including claims administration for medical, indemnity dental, vision and prescription drugs, utilization review and case management services, subrogation services, and flexible spending account (FSA) administration. The TPA will also be expected to review FW's stop-loss renewals annually and obtain comparative quotes from other stop loss vendors each year.

1.2 Contract Award

A contract will be awarded to the Offeror whose proposal is determined to be the most advantageous to FW. The successful Offeror will be notified by issuance of a written contract and Purchase Order. Public notice of award will be posted on the official FW web site: (http://www.fairfaxwater.org/procurement/notice_of_award.htm).

1.3 Definitions

Whenever used in this solicitation or in the contract documents, the following terms have the following meanings, which are applicable to both the singular and plural and the male and female gender thereof:

- A. **Acceptance** – FW's acceptance of the project from the contractor upon confirmation from the Project Manager and the contractor that the project is totally complete in accordance with the contract requirements and that all defects have been eliminated. Final acceptance is confirmed by the making of final payment of the contract amount including any change orders or adjustment thereto.
- B. **Award** – Means the decision by FW to execute a contract after all necessary approvals have been obtained.
- C. **Committee** – Means the Evaluation Committee.
- D. **Contract** – Means the formal written acceptance of an offer by FW in the form of a written agreement that incorporates by reference the work to be performed (i.e. the Contract Documents).

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- E. Contractor** – The person, firm or corporation with whom FW has entered into a contractual agreement and includes the plural number and the feminine gender when such are named in the contract as the contractor.
- F. Default** – means that the Contractor has failed to fulfill its contractual obligations properly and on time.
- G. Desirable** – The term "desirable" or "it is desirable" is used to identify features that are desired but are not mandatory.
- H. Evaluation Committee** – The Evaluation Committee is the group of individuals appointed to review, evaluate, and rank each proposal, and make a recommendation for award.
- I. Liquidated Damages** – A sum stated in a contract to be paid as ascertained damages for failure to perform in accordance with the contract. The damage figure stipulated must be a reasonable estimate of the probable loss, and not calculated simply to impose a penalty on the contractor.
- J. Must** – The term "must" or "shall" is used throughout this document to indicate mandatory requirements. It means that the Offeror will provide the goods and/or services specified in the RFP.
- K. Notice** – The term "Notice" or the requirement to notify means all Notices, demands, instructions, claims, approvals, and disapprovals required to obtain compliance with the contract requirements. Any Notice by either party to the contract shall be sufficiently given if delivered to the last known business address of the person, firm or corporation constituting the party to the contract, or to his, their or its authorized agent, representative or officer, by certified or registered mail, FedEx, or UPS, to the individual or firm, or to an officer of the Contractor for whom it is intended.
- L. O.E.M. / OEM** – Original Equipment Manufacturer.
- M. Offeror** – means any person submitting a response to an RFP.
- N. Performance Bond** – A contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful Offeror to protect the government from loss due to his/her inability to complete the contract in accordance with its terms and conditions.
- O. Professional Services** – Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.
- P. Project Manager** – means the FW employee assigned to this Project for purposes of oversight of the project. The Project Manager is responsible for all aspects of the contract (excluding contract modifications) after contract award, including but not limited to approving design changes, and authorizing payment for completed work, etc.
- Q. Proposal** – means the response by an Offeror to a Request for Proposals issued by a procurement agency to obtain goods or labor. The response may include but is not limited to an Offeror's price and terms for the proposed contract, a description of technical expertise, work experience, and other information requested in the solicitation.
- R. RFP** – means Request for Proposals which means any document, whether attached or incorporated by reference, used for soliciting proposals from Offerors under any method allowed under current Virginia Procurement regulations.
- S. Scope of Work** - The term "Scope of Work" refers to the written technical description of services to be provided by the successful offeror to be applied to the Work and certain administrative details applicable thereto.

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T. Shall – Has the same meaning as the word must.

1.4 Term of Contract and Contract Renewal

- A. Term:** The initial term of the contract will be for two years, with the option to renew the contract for up to three additional one-year periods, for a maximum total of five years.
- B. Renewal:** Renewal will be at the then current rates, terms and conditions (see section 4.4“Annual Economic Price Adjustment”). Failure to renew by the expiration date of the then current contract year will not automatically cancel the contract. FW may retroactively renew the contract at any time prior to the last day of the following contract year providing that FW has not formally canceled the contract. Price adjustments requests for future years may or may not be approved by Fairfax Water depending on past performance of the contractor and the then current market conditions.

1.5 Minimum Qualifications

Offerors must be able to meet all of the following minimum qualifications to be considered for this RFP. FW will not consider any vendor that does not meet these minimum qualifications. Offerors shall provide documentation with their proposal submission demonstrating they meet the following minimum requirements. This shall be provided in a separate section after offeror’s transmittal letter.

- A. The TPA must be able to provide all of the following services:**
 - 1. claims administration for medical, indemnity dental, vision and prescription drugs;**
 - 2. utilization review;**
 - 3. case management services;**
 - 4. subrogation services; and**
 - 5. FSA administration.**
- B. The TPA must have access to a choice of PPO networks to provide discounts to the Plan and its members and must be able to adjudicate claims using the proposed network.**
- C. The TPA must currently partner with and electronically interface to at least two (2) pharmacy benefit managers (PBMs).**

End Section 1

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SECTION 2

2. SCOPE OF WORK

2.1 Description and Summary Requirements

Overview

FW is Virginia's largest water utility, serving one out of every five Virginians who obtain their water from public utilities. FW was chartered in 1957 by the Virginia State Corporation Commission as a public, non-profit water utility. Nearly 2 million people in the Northern Virginia communities of Fairfax, Loudon, Prince William and Alexandria depend on FW for drinking water. FW is located in Fairfax, Virginia at 8570 Executive Park Avenue. Their website is www.fairfaxwater.org.

FW offers a comprehensive benefits plan to its approximate 423 employees and 150 pre-65 retirees. The medical, prescription drugs, dental and vision plans for actives, COBRA participants and early retirees are self-funded and are administered by a third-party administrator (TPA).

The plan is currently considered a grandfathered plan under the Affordable Care Act. FW intends to remain grandfathered for the foreseeable future. Therefore, it is important that the current plan of benefits be administered exactly as outlined in the attached Summary Plan Description (SPD) to avoid a possible loss of grandfathered status.

As of March 2015, there are 366 Actives, 3 Disabled, and 2 COBRA employees and 128 early retirees enrolled with the Plan. (Additionally, there are approximately 195 Medicare retirees currently covered by a fully insured Medicare Supplement program. These retirees are not included in the scope of this RFP.)

Services currently performed by the TPA include claims administration for medical, prescription drugs, dental and vision coverage's. They also provide utilization review and case management, subrogation and recovery services and market FW's specific stop loss renewal on an annual basis.

The successful proposer must be able to provide all of the requested administration services outlined below and demonstrate excellence in benefit fund administration service with an emphasis on public sector health plan administration. They must also demonstrate consistently high levels of quality client and employee service.

2.2 General Requirements

The following list describes the key service requirements for plan administration that would be incorporated into the Service Agreement with the selected TPA. Offerors must respond to all mandatory requirements presented in this RFP. Failure to respond to a mandatory requirement

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may cause the disqualification of your proposal. Disqualification of a proposal due to the failure to respond to a mandatory requirement will be at the sole discretion of Fairfax Water.

A. Mandatory Requirements:

The successful offeror shall:

1. Duplicate the existing benefit plan design for medical, prescription drugs, dental and vision for a grandfathered health plan as shown in Attachment D, "SPD"
2. Be responsible for processing and payment of medical, prescription drug, dental and vision claims
3. Account for and report on claims by department, (i.e., active, pre-65 retiree, COBRA), as well as in the aggregate.
4. On an annual basis, obtain specific stop-loss quotes for options both with and without prescription drug coverage for actives, disabled, COBRA and pre-65 retirees.
5. Provide FW a robust web portal for enrollment, maintenance of eligibility, and reporting.
6. Provide plan participants web access to EOBs, claims data and claims processing status including Rx, and FSA claims/reimbursements
7. Provide monthly and quarterly reports to employer on paid claims, utilization, etc.
8. Perform NY HCRA reporting (and reporting for other states as may be required in the future) and remittance of payment on FW's behalf. In addition, successful offeror shall maintain copies of all filings.
9. Perform annual PCORI fee calculation. .
10. Perform annual transitional reinsurance fee calculation and remittance of payment on FW's behalf.
11. Propose a PPO network that will maximize negotiated savings as well as minimize disruption to members.
12. Preparation of required annual notices, including Summary of Benefits and Coverage (SBC), as well as the Plan Document by required statutory deadlines.
13. Perform monthly bank checks reconciliation.
14. Offer robust performance guarantees.
15. Provide customer service call center hours from 8 am to 6 pm Eastern Standard Time.

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16. Offer a designated account manager to act as a primary contact for FW. The designated manager should possess the ability to resolve any and all issues for FW.
17. Demonstrate ability to offer outstanding customer and client service to FW.
18. Attend meetings as required by FW and assist in developing member communication materials
19. Work with FW in responding to appeals and defending against any legal actions filed against the Plan or FW relating to Plan operations, policies, specifications, etc.
20. Administer and adjudicate claims including re-pricing, detection of upcoding, unbundling and fraudulent claims.
21. Provide coordination of benefits with other group health plans, and private insurance coverage.
22. Provide coordination of appeals process, including issuing notices of decisions on appeal in accordance with the Plan Rules.

B. Preferred Experience

While not mandatory requirements, FW would like to partner with a vendor that can demonstrate expertise in the following areas:

1. Employer self-service report generation.
2. Ability to provide access to a passive dental network.
3. Mobile applications for plan participants.
4. Experience with and ability to administer Health Savings Accounts.
5. Experience with and ability to offer wellness programs/capabilities.
6. Minimum two-year rate guarantee for administrative fees.
7. Experience with clients of similar size and complexity.
8. Ability to accept member-submitted claims via fax or e-mail.

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2.3 References

Using Attachment A, provide at least five references for which you have provided the same or similar services within the last three years. At least three references must be for clients that you have provided at least one complete year of services. FW reserves the right to require additional references from the Offeror, or to obtain additional references from other sources not provided by the Offeror.

2.4 Insurance Claims Against Offeror

In addition to the mandatory insurance requirements listed in Section 4.19 (Insurance) and at the request of FW Offerors shall submit a list of all insurance claims made against it within the past 12 months. FW reserves the right to reject any offer if in FW's opinion the amount or number of claims is deemed to be excessive. Failure to provide this information may result in rejection of your proposal.

1.

END SECTION 2

SECTION 3

3. SUBMISSION OF PROPOSALS AND METHOD OF EVALUATION

3.1 General

The following general information shall be provided. Offerors shall follow instructions carefully to ensure that proposals are properly prepared.

1. Either the attached Transmittal Form (Attachment B) or a transmittal letter prepared on the Offeror's business stationery must accompany the proposal. A transmittal letter must include a confirmation that the individual(s) signing the letter are authorized and agrees to furnish the services described in the Offeror's proposal and in accordance with this RFP; and as may be mutually agreed upon by subsequent negotiation.
2. Each Offeror must furnish all information required by the RFP. The person signing the proposal must initial erasures or other changes. Proposals signed by an agent of the corporation must be accompanied by evidence of his or her authority to bind the corporation to the terms and conditions of this solicitation.
3. FW reserves the right to conduct discussions with qualified Offerors in any manner necessary to serve the best interest of FW.

3.2 Proprietary Information

1. Except as provided herein or as otherwise set forth in §2.2-4342 of the Virginia Public Procurement Act (Va. Code Ann. §2.2-4300 *et seq.*, the "Act"), all proceedings, records, contracts and other public records relating to procurement transactions shall be open to inspection in accordance with the Virginia Freedom of Information Act (Va. Code Ann. §2.2-3700 *et seq.*, the "Virginia FOIA").
2. Offeror or Contractor shall have the right to identify data or other materials submitted in connection with this procurement as trade secrets or proprietary information, which shall not be subject to inspection pursuant to either §2.2-4342 of the Act or the Virginia FOIA, by submitting to FW prior to or at the time of submission of its proposal a separate, written notice on its letterhead stationery setting forth the following: (i) a statement indicating that the Offeror, or Contractor wishes to invoke the protections of this section; (ii) an identification of the data or other materials for which protection is sought; and (iii) a statement with regard to why protection is necessary.

3.3 Questions and Communications

1. All contact between prospective Offerors and FW with respect to this solicitation will be formally held at scheduled meetings or in writing through the Issuing Office. Questions and comments regarding the meaning or interpretation of any aspect of this solicitation must be submitted in writing to the Procurement Contact identified on the cover page to this solicitation and must be received by the Procurement Contact on or before the deadline for submitting questions that is specified on such cover page. Only written

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questions will be accepted. Questions and/or comments which are submitted after the deadline set forth on the cover page to this solicitation will not be answered.

2. FW shall respond to all timely questions and comments that are properly submitted hereunder and are deemed to address a matter that is relevant and substantive in nature within a reasonable period of time, in the form of a written Addendum that will be transmitted to all prospective Offerors at the addresses furnished to FW for such purpose. Oral communications between FW and any Offeror regarding the interpretation or meaning of any aspect of this RFP are not authorized and may not be relied upon for any purpose.

3.4 Addenda to the RFP

1. FW reserves the right to amend this solicitation at any time prior to the deadline for submitting Bids or Proposals. If it becomes necessary to revise any part of this RFP, notice of the revision will be given in the form of an Addendum that will be provided to all prospective Offerors who are on record with FW as having received this solicitation. If, in the opinion of FW, the deadline for the submission of proposals does not provide sufficient time for consideration of any Addendum, then such deadline may be extended at the discretion of FW.
2. It shall be the responsibility of each Offeror to contact the Purchasing Contact identified on the cover page to this solicitation prior to submission of a proposal hereunder in order to determine whether any Addenda have been issued in connection with this procurement. Notwithstanding any provision to the contrary, the failure of any Offeror to receive any Addenda shall neither constitute grounds for withdrawal of its proposal nor relieve such Offeror from any responsibility for incorporating the provisions of any Addenda in its proposal.

3.5 Duration of Proposals

Proposals shall be valid for a minimum of 120 days following the deadline for submitting offers. If an award is not made during that period, all offers shall be automatically extended for another 120 days. Offers will be automatically renewed until such time as either an award is made or proper notice is given to FW of Offeror's intent to withdraw its offer. Offers may only be withdrawn by submitting Notice at least 15 days before the expiration of the then current 120-day period.

3.6 Instructions for Submitting Proposals

1. The deadline for submitting Proposals is shown on the cover sheet. Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Purchasing Department. Proposals will be opened in accordance with the provisions of the Virginia Public Procurement Act. There will be no public proposal opening. The list of prospective Offerors shall be available for public inspection only after Contract award or upon cancellation of the solicitation.

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2. The attached Transmittal Form (Attachment "B") must accompany the proposal. The purpose of this form is to formally submit the proposal and bind the Offeror to the terms, conditions and specifications contained in the solicitation. The Form must be signed by an individual who is authorized to bind the Offeror's firm to all items in the proposal including products, services, etc., and prices, contained in the proposal. A transmittal letter may be substituted for the attached form. If used, the transmittal letter must include an affirmative statement that binds the firm to the terms, conditions and specifications contained in the RFP; and also state that the person signing the transmittal letter is authorized to bind his/her firm. The letter must also provide all of the information contained on the Transmittal Form.
3. Submit one original and seven sets of your Proposal in two separate, sealed volumes. Volume 1 shall contain the technical portion of your proposal. Volume 2 shall contain the cost portion of your proposal. Offerors shall ensure that technical and price information is not commingled. The set of original signed documents must be uniquely identified on the cover of each volume. Costs are not to be included in the Technical Proposal (Volume 1). In addition, offerors shall submit two electronic (CD) versions of their technical and cost proposals.
4. All proposals must be submitted in a sealed package(s). No other form of submission will be accepted (i.e., E-mail, Facsimile, etc.). Proposal packages must be identified on the outside as follows:

<i>From:</i> _____	<i>Name of Offeror</i>
	<i>Due Date</i>
_____	_____
<i>Street</i>	<i>RFP No.</i>
_____	_____
<i>City, State, Zip Code</i>	<i>RFP Title</i>

3.7 Contractor Identification

All Offerors must include the following in their transmittal letters:

- A. Individual contractors must provide their social security numbers, and
- B. Proprietorships, partnerships, and corporations must provide their federal employer identification numbers and
- C. Offerors Virginia State Corporation Commission license number

3.8 Late Proposals

Proposals or unsolicited amendments to proposals arriving after the closing date and time will not be considered. Proposals received after the proposal submission deadline will be returned to

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the Offeror unopened providing that sufficient proposal identification information is shown on the outside of the proposal envelope.

3.9 Proposal Organization

- A. **Technical Proposal (Volume I):** All proposal elements except price shall be included in the Technical Proposal and shall include at a minimum the following:
1. Transmittal Form,
 2. **Company History:** The Offeror will briefly describe its company history, sales history, and history of performing work as described herein.
 3. **Written Narrative:** Each Offeror must provide a written narrative that discusses the Offeror's experience in providing the services described in Section 2. Include any special qualifications, experience, awards, etc. Each offeror shall demonstrate how they meet the requirements of the Minimum Requirements Section of this RFP.
 4. **Confirmation of Compliance with the Scope of Work:** The Offeror shall describe how the proposal meets FW's Scope of Work. If any portion of the Scope of Work cannot be met, the Offeror must identify the discrepancy in detail and describe an alternative solution.
 5. References
 6. Responses Section 5 – Vendor Questionnaire
- B. **Cost Proposal (Volume II):** The cost of the proposed solution shall be provided using Section 6 – Proposed Fees and described in sufficient detail to allow the Committee to understand all cost elements (materials, labor, design fees, etc.). Any related costs such as travel, housing, food, etc. must be included. Include as part of the cost proposal a list of all employees by position/title, hourly pay rate and number of hours the person will be working on this project. This information is for informational purposes and for budget planning in the event that additional services are required. The total cost to complete the project as offered shall be firm and fixed and requests by the Contractor to increase the Contract price will not be considered. FW reserves the right to expand or contract the scope of the project and project costs may increase or decrease accordingly. The FW Purchasing Department must approve changes proposed by the Contractor in writing prior to implementation. The Contractor will be given reasonable advance notice of any changes in the scope of the contract by FW. The cost proposal should include responses to Section 6 – Proposed Fees.

3.10 Evaluation Process

1. **Evaluation Committee:** FW will establish an Evaluation Committee (the "Committee") to review and rank each proposal. The Committee will be composed of the Purchasing Contact identified on the cover page and other individuals designated by FW. The Committee may request additional technical assistance from other sources.
 - A. **Qualifying and Evaluating Proposals:** Each proposal will first be reviewed for compliance with the requirements of this RFP. The Offeror assumes

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responsibility for addressing all necessary technical and operational issues in order to meet the objectives of the RFP. Each proposal will be evaluated according to the criteria listed below:

1. Responsiveness and completeness of the proposal,
2. Company history and qualifications,
3. Past performance,
4. Project understanding and approach,
5. Project team,
6. Written narrative,
7. Compliance with Contractual Terms
8. References, and
9. Price

3.11 Acceptable and Unacceptable Proposals and Rejection of Offers

FW reserves the right to reject any or all proposals received. All proposals are assumed to meet the minimum and mandatory qualifications outlined in the scope of work. Proposals must meet or exceed the mandatory requirements of the Scope of Work. If an Offeror does not meet a mandatory requirement it will be rejected. The Evaluation Committee may determine that an Offeror is "not responsible," i.e., does not have the capabilities in all respects to perform the work required. The Committee may determine that a proposal meets the Scope of Work but does not raise itself to the competitive level of some or all of the other offers. In such instances, the Committee shall issue a determination that any and all such proposals are "not reasonably susceptible of being selected." Offers deemed by the Committee to be not responsive, not responsible, or not reasonably susceptible of being selected will be excluded from further consideration and the Offeror so notified. Upon notification that an Offeror is no longer being considered, the Offeror may request that the cost volume be returned. Requests must be received within 10 calendar days of the date the notice was issued by FW. If the Offeror does not request that the Cost proposal be returned within 10 days of notice, the Cost proposals will be destroyed. The Technical proposal will be retained in the bid file.

3.12 Oral Presentations

Finalists may be required to make individual presentations to the Committee as part of the technical evaluation process. If so notified by the FW, the Offeror must provide a presentation within two calendar weeks of notification or as may be arranged by FW. Finalist interviews will be held during the week of June 15 – June 19, 2015. Failure to provide a satisfactory presentation will be grounds for a declaration that the offer is non-responsive. Presentations shall be conducted only at FW.

3.13 Final Ranking and Selection

After each proposal has been evaluated, they will be ranked. FW shall invite the highest ranked Offerors to enter into negotiations with FW. Upon completion of negotiations, the Committee will make a recommendation to the Committee Chair to award the contract to the Offeror whose proposal is determined to be the most advantageous to FW.

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3.14 Negotiation

After selection, but prior to contract award, the Committee reserves the unilateral right to negotiate any aspect of the proposal or proposed contract in any manner that best serves the needs of FW and is within the scope of the solicitation. FW also reserves the unilateral right to accept the best proposal as submitted without negotiation, and therefore Offerors must not assume that they will be given an opportunity to change any part of their proposal, including the Price Proposal.

End Section 3

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SECTION 4

4. STANDARD TERMS AND CONDITIONS

The Agreement for Service ("Contract" or "Agreement") with the successful offeror will contain the following Terms and Conditions. Offerors taking exception to these terms and conditions or intending to propose additional or alternative language must (a) identify with specificity the FW Terms and Conditions to which they take exception or seek to amend or replace; and (b) include any additional or different language with their proposal. Failure to both identify with specificity those terms and conditions offeror takes exception to or seeks to amend or replace as well as to provide offeror's additional or alternate Contract terms may result in rejection of the proposal. While FW may accept additional or different language if so provided with the proposal, the Terms and Conditions marked with an asterisk (*) are mandatory and nonnegotiable.

4.1 Authorization to Do Business in Virginia *

Each Offeror that is organized or authorized to transact business in the Commonwealth of Virginia pursuant to Title 13.1 or Title 50 of the Virginia Code shall include with its bid the identification number issued to it by the Virginia State Corporation Commission. Any Offeror that is not authorized to transact business in Virginia as a foreign entity under Title 13.1 or title 50 of the Virginia Code or as otherwise required by law shall include in its bid a statement describing why the Offeror is not required to be so authorized.

4.2 Antitrust

By entering into a contract, the contractor conveys, sells, assigns, and transfers to FW all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by FW.

4.3 Annual Economic Price Adjustment

In the case of annually renewable contracts, the Contractors may submit a request for contract price increases once annually, not to exceed 3% for each renewal year. Requests for price increase must be submitted within 90 days of publication by the Bureau of Labor Statistics. Price adjustments requests for future years may or may not be approved by Fairfax Water depending on past performance of the contractor and the then current market conditions.

4.4 Arrearage

By submitting an offer in response to this solicitation, the individual or firm submitting the offer shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing FW, the Commonwealth of Virginia, or any public organization within Virginia. Said representation shall include the payment of taxes and employee benefits. Offeror further agrees that it shall make diligent effort to avoid becoming in arrears during the term of the contract.

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4.5 Assignment of Interest *

The Contractor shall not assign any interest in any resulting Contract and shall not transfer any interest in the same without prior written consent of FW, which FW shall be under no obligation to grant.

4.6 Availability of Funds

It is understood and agreed between the parties herein that FW shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

4.7 Cancellation

FW may cancel this solicitation at any time and for any reason prior to award.

4.8 Compliance with Laws

The Offeror hereby represents and warrants that:

- A. It is qualified to do business in the Commonwealth of Virginia and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing FW, the Commonwealth of Virginia, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance of its obligations under this Contract.

4.9 Contract Changes / Change Orders

- A. No verbal agreement or conversation with any officer, agent or employee of FW either before or after the execution of any Contract resulting from this solicitation or follow-on negotiations, shall affect or modify any of the terms, conditions, specifications, or obligations contained in the solicitation, or resulting Contract. No alterations to the terms and conditions of the Contract shall be valid or binding upon FW unless made in writing and signed by the purchasing / designee contact identified on the cover page. Contract changes shall be in writing, and shall be on official FW Purchasing Department letterhead. In any event and in all circumstances, the Contractor shall be solely liable and responsible for any Contract changes, deviations, etc., made without first receiving written authorization to deviate from the Contract.
- B. Changes can be made to the contract in any of the following ways:

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1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. FW may order changes within the general scope of the contract at any time by Notice to the Contractor. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give FW a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to FW's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FW with all vouchers and records of expenses incurred and savings realized. FW shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by Notice to the Purchasing Department. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by FW or with the performance of the contract generally.

4.10 Debarment Status

By submitting their proposals, Offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting offers or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

4.11 Drug-free workplace to be maintained by contractor *

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or

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purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

4.12 Employment Discrimination by Contractor Prohibited; Required Contract Provisions *

The following provision is required to be in every contract of more than \$10,000 (Virginia Public Procurement Act, § 2.2-4311)

A. During the performance of any ensuing contract, the Contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

B. The contractor will include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

4.13 Ethics in Public Contracting *

Offeror hereby certifies that it has familiarized itself with Article 4 of Title 11 of the Virginia Public Procurement Act, Section 11-72 through 80, Virginia Code Annotated, and that all amounts received by it, pursuant to a contract resulting from this solicitation, are proper and in accordance therewith.

4.14 Examination of Records

The Contractor agrees that in any resulting contract, either FW or its duly authorized representative shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to any resulting contract. The Contractor further agrees to cooperate in an independent audit of claims processed and paid. This obligation shall expire five years after the final payment for the final service performed as a result of any and all contract(s) awarded pursuant to this solicitation, or until audited by FW, whichever is sooner. Contractor will provide reasonable access to any and all necessary documents and upon demand provide copies of documents if so required by FW or

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its representative(s). FW will reimburse the Contractor for any reasonable expenses it incurs as a result of such a request.

4.15 Familiarity with Scope of Work

Each Offeror shall bear responsibility for thoroughly examining this solicitation in its entirety. In the event that an Offeror has any questions or comments regarding the proper meaning or intent of any aspect of this solicitation, then such Offeror shall submit all such questions and comments in writing to the Procurement Contact identified on the cover sheet of this solicitation in accordance with the provisions of Paragraph 3.3 (Questions and Communications) hereof.

The submission by an Offeror of a Proposal in response to this solicitation shall be deemed to constitute a representation on the part of such Offeror that it has thoroughly examined this solicitation and has submitted any and all questions and comments it may have regarding the meaning or interpretation of this solicitation to FW in the manner prescribed herein.

4.16 Formation of Contract with Successful Offeror

- A. Any contract entered into as a result of this RFP shall be by and between the Offeror as Contractor and FW. It shall include the following items, which are listed in order of precedence:
1. The fully executed contract between the parties, or FW Purchase Order,
 2. The RFP and any Addenda to the RFP,
 3. The Offeror's response to the RFP (including any drawings and submittals), and
 4. All correspondence between the parties regarding this RFP.
- B. Anything called for by one of the contract documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other contract documents shall have the intended effect.
- C. By submitting an offer in response to this solicitation, the Offeror agrees to all Terms, Conditions and to the Scope of Work section contained herein, unless and except as otherwise noted as an exception in the Offeror's proposal. Any terms and conditions that the Offeror proposes to use must be submitted as part of the proposal. Terms and conditions submitted by an Offeror after the solicitation closing date shall not be accepted and will not be considered for incorporation into the terms of the awarded contract.
- D. All time limits stated in the contract documents, including but not limited to the time for completion of the work, are of the essence.

4.17 Governing Law; Venue; Waiver of Jury Trial *

Notwithstanding any provision to the contrary, this solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia. Any dispute arising hereunder which is not otherwise resolved by the parties shall be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The Contractor and FW hereby waive any right such party may have to a trial by jury in connection with any such litigation.

4.18 Incorporation by Reference

- A. This solicitation is issued in accordance with, and controlled by, the Virginia Public Procurement Act (VPPA), which is incorporated into and made part of the solicitation. By submitting a proposal in response to this solicitation, all Offerors acknowledge the VPPA and agree to be bound by it. The VPPA may be accessed via the Virginia Department of General Services, Department of Purchases and Supply Website: (<http://www.eva.virginia.gov/buyers/pages/vppa.htm>).
- B. The terms, conditions and specifications contained herein including any attachments or addenda are incorporated into any contract issued as a result of this solicitation.

4.19 Indemnification and Responsibility for Claims and Liability

With respect to any contract that results from this solicitation, Offeror is bound by the following:

- A. The Contractor shall indemnify, save harmless and defend FW, or any employee of FW, against liability for any suits, actions, or claims of any character whatsoever arising from or relating to the performance of the Contractor or its subcontractors under this contract.
- B. FW has no obligation to provide legal counsel or defense, or pay attorney's fees to the Contractor or its subcontractors in the event that a suit or action of any character is brought by any person not party to the contract, against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- C. FW has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- D. The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or related to the Contractor's obligations under the contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor's performance under this contract.
- E. The Contractor shall pay all royalties and license fees necessary for performance of the contract. The Contractor shall defend all suits or claims for infringement of any patent rights or other proprietary rights arising from or related to performance of the resulting contract and shall save FW harmless from any and all loss, including Attorneys' fees arising out of any such claim.

4.20 Insurance

- A. In addition to the mandatory insurance requirements listed in this Section and, at the request of FW, any Offeror may be required to provide a list of all insurance claims made against it within the past 36 months. FW reserves the right to reject any bid if in FW's opinion the amount or number of claims is deemed to be excessive. An Offeror's failure

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to comply with this requirement may result in rejection of its bid. If no claims have been made, then the Offeror shall so state in its bid. Fairfax Water may require such information from the Contractor as it deems necessary to assess the Contractor's financial ability to pay any deductibles with respect to the insurance policies required hereunder.

- B. Before commencing the work, the Contractor shall procure and maintain at its own expense, minimum insurance in forms and with insurance companies acceptable to FW to cover loss or liability arising out of the Work. All insurance policies must be underwritten by insurers authorized to conduct business within the Commonwealth of Virginia and must have a Best's rating of at least A- and a financial size of class VIII or better in the latest edition of Best's Insurance Reports.
- C. The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or related to the Contractor's obligations under the contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor's performance under this contract.
- D. With the exception of Workers' Compensation and Employers' Liability Insurance, all additional insurance policies specified herein shall name FW as an additional insured with regard to work performed under any subsequent Contract
- E. The Contractor will provide FW with copies of certificates of insurance coverage and proof of payment of all premiums. Each certificate of insurance must include: (a) an endorsement from the insurer that certifies that the Contractor maintains the referenced policy in full force and effect; (b) where applicable, a statement indicating that FW is included as an additional insured; and (c) a provision requiring that not less than 30 days written notice will be given to FW before any policy or coverage is canceled or modified in any material respect. Without limiting the requirements set forth above, the insurance coverages will include a minimum of:
 - 1. Workers' Compensation and Employers' Liability Insurance: Statutory requirements and benefits as required by the Commonwealth of Virginia; and
 - 2. Required Commercial General Liability Insurance: This insurance must be written on an "occurrence" basis and shall be endorsed to include FW as an additional insured and shall provide at a minimum the following:

◆ General Aggregate Limit (Other than Products-Completed Operations)	\$1,000,000
◆ Products-Completed Operations Aggregate Limit	\$ 500,000
◆ Personal & Advertising Injury Limit	\$ 500,000
◆ Each Occurrence Limit	\$ 500,000
- F. Business Automobile Liability Insurance: This insurance coverage must extend to any motor vehicles or other motorized equipment regardless of whether it is owned, hired, or non-owned and must cover Bodily Injury and Property Damage with a combined single limit of at least \$1,000,000 each accident. This insurance must be written in comprehensive form and must protect the Contractor and FW against claims for injuries

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to employees of the public and/or damage to the property of others arising from the Contractor's use of motor vehicles or other equipment and must cover both on-site and off-site operations.

- G. Nothing contained herein will be deemed to operate as a waiver of FW's sovereign immunity under the law.

4.21 Partial Invalidity

Neither any payment for, nor acceptance of, the whole or any part of the services by FW, nor any extension of time, shall operate as a waiver of any provision of any Contract resulting from this RFP, nor of any power herein reserved to FW, or any right to damages herein provided, nor shall any waiver of any breach of any Contract be held to be a waiver of any other or subsequent breach. Failure of FW to require compliance with any term or condition of any Contract shall not be deemed a waiver of such term or condition or a waiver of the subsequent enforcement thereof.

4.22 Payment

- A. **Invoices:** All invoices are to be sent directly to FW Accounts Payable department by mail, fax, or E-mail. Invoices shall include the FW Purchase Order / Contract number and the contractor's FEIN. Invoices are not to be sent to the contract Project Manager, or other departmental reps. Failure to comply may result in late payments for which FW will not be liable.
- B. **Terms:** All payments will be Net 30 from the date of receipt of a valid invoice at the FW Finance Department. Payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- C. **Invoices:** Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. Invoices shall show the FW Purchase Order or contract number and either the social security (for individual Contractors) number or the federal employer identification number (for proprietorships, partnerships, and corporations) and are subject to review and approval by the FW Project Manager.
- D. **Partial Payments:** Requests for partial payments or advanced payments must be submitted as part of the Price Offer along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Offeror must waive the requirement in order to remain in consideration.
- E. **Unreasonable Charges:** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable,

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FW shall promptly notify the Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination.

4.23 Payment Clauses Required in All Contracts *

Section § 2.2-4352 of the Virginia Public Procurement Act requires the following:

- A. That any contract awarded by FW include the following clauses:
1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the contractor by FW for work performed by any subcontractor(s) under the contract:
 - a. The Contractor shall pay its subcontractor(s) for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under that contract; or
 - b. Notify FW and any subcontractor(s), in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
 2. Offerors shall include in their offer submissions either: (i) if an individual contractor, their social security numbers; and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
 3. The contractor shall pay interest to the subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the contract, except for amounts withheld as allowed in subdivision 1.
 4. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.
- B. The contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- C. A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of FW. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

4.24 Precedence of Terms

By submitting a proposal in response to this solicitation, the Offeror agrees that the terms and conditions contained in this solicitation shall control any contract arising from this solicitation. Any proposed terms and conditions, including any for a contract that the Offeror proposes to use, shall be submitted as part of the Offeror's proposal. Terms and conditions submitted by an Offeror after the deadline for submitting proposals will be rejected and the Offeror will be held to the terms and conditions contained herein. Contract award is contingent on the Offeror and FW agreeing on mutually acceptable terms and conditions. Failure to do so will automatically

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disqualify the Offeror from contract award. To the extent that a conflict arises or is found to exist between the Offeror's proposal and this solicitation, including any addenda thereto, the terms, conditions and specifications contained in this solicitation and any addenda thereto shall in all cases prevail.

4.25 Price Firm Period

Proposal Prices: Pricing shall be firm and fixed as originally offered and accepted for the first 12 months of the contract.

4.26 Rider Clause

With the exception of contracts for Professional Engineering Services and subject to the mutual agreement between the parties, any contract awarded on the basis of this solicitation may be used by any public entity (to include jurisdictions comprising the Metropolitan Washington Council of Governments), to enter into a contract for the services described and defined herein. For single purchases, the contract may be used for up to 12 months from the actual date of contract award. For multi-year contracts, the contract may be used throughout the effective period of the contract. Contracts awarded as a result of this solicitation will be subject to these terms and conditions, and/or such terms and conditions as may be required by the controlling body for the public agency using the contract. Pricing shall be as offered by the successful Offeror and subsequently accepted by FW.

4.27 Tax Exemption

FW is exempt from Federal Excise Taxes, Virginia State Sales and Use Taxes, and the District of Columbia Sales Taxes and Transportation Taxes. FW's tax exempt number is 54-6025290.

4.28 Termination of Contract

- A. For Cause. In the event that the Contractor: (1) fails to deliver any Commodity or Service in accordance with the time period established therefore in the Contract; or (2) fails to furnish any Commodity or Service which conforms in all respects to the requirements of the Contract; then FW, without prejudice to any other rights or remedies it may have at law or in equity (including its right to seek damages from the Contractor), shall have the right to terminate the Contract and any outstanding Purchase Orders by issuing a written notice of termination to the Contractor. Such notice of termination shall describe in reasonable detail the grounds for the termination and shall take effect immediately upon receipt by the Contractor.
- B. If, after issuance of a notice of termination under this Section it is determined for any reason that cause for such termination did not exist, then the rights and obligations of the parties shall be the same as if the notice of termination had been delivered under the provisions of subsection B (termination for convenience) hereof; provided, however, that the Contractor in such event shall be deemed to have received seven days prior written notice of such termination. Any compensation due the Contractor pursuant to subsection B shall be offset by the cost to FW of remedying the default by the Contractor. The Contractor shall in no event be entitled to receive any consequential damages or any

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anticipated profits with respect to Commodities not yet furnished to, and accepted by, FW as of the effective date of any such termination.

- C. For Convenience. FW shall have the right to terminate the Contract and/or any outstanding Purchase Orders issued hereunder at its own convenience for any reason by giving seven business days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the actual cost of any Commodity delivered to, and accepted by, FW and the actual cost of any equipment, goods or materials ordered by the Contractor hereunder in good faith which could not be canceled, less the salvage value thereof, provided sufficient substantiation is furnished to FW. Any subcontract entered into by the Contractor in connection with the transactions contemplated hereby shall contain a similar termination provision for the benefit of the Contractor and FW. The Contractor shall in no event be entitled to receive anticipated profits on any Commodities not yet furnished to and accepted by FW as of the effective date of any such termination.

4.29 Unit Prices Prevail

The Price Proposal shall include a complete listing of all prices (e.g., annual maintenance, labor, materials, training, etc.). Any work performed beyond the scope of the contract and within the first 12 months after contract award shall be at the prices specified in Volume II. In the event of a conflict between unit prices and extended prices, the unit price shall prevail. All proposals shall be complete and accurate as submitted.

4.30 Virginia Freedom of Information Act

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act.

4.31 Authority to Transact Business in Virginia*

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with FW pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. FW may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

4.32 Licensure

To the extent required by the Commonwealth of Virginia (*see e.g.* 54.1-1100 *et seq.* of the Code of Virginia) or FW, the Contractor shall be duly licensed to perform the services required to be delivered pursuant to this Contract.

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4.33 Contractual Disputes

A Vendor, Contractor, or Service Provider shall give written notice to the Purchasing Agent of his/her intent to file a claim for money or other relief within ten (10) calendar days of the occurrence giving rise to the claim or at the beginning of the work upon which the claim is to be based, whichever is earlier. The written claim shall be submitted to the Purchasing Agent no later than sixty (60) days after final payment. If the claim is not disposed of by agreement, the Purchasing Agent shall reduce his decision to writing and mail or otherwise forward a copy thereof to the bidder within thirty (30) days of receipt of the claim. No Vendor, Contractor, or Service Provider shall institute any legal action until all statutory requirements have been met. Each party shall bear its own costs and expenses resulting from any litigation, including attorney's fees.

4.34 Faith-Based Organizations *

FW does not discriminate against faith-based organizations.

4.35 Immigration Reform and Control Act of 1986 *

By entering this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

End Section 4

SECTION 5

5. VENDOR QUESTIONNAIRE

Instructions:

- Provide an answer to each question and do not leave blank or unanswered questions.
- Answer the question as directly as possible and incorporate all information within the questionnaire section. Please avoid referring to attachments or collateral materials in lieu of answers. Do not include promotional materials.
- The bidder will be held accountable for accuracy/validity of all answers.
- RFP responses will become part of the contract between the winning bidder and FW.
- Please remember to return your responses to Section 5 within the Technical Proposal section of your submission.

5.1 Company Background/Profile

1. How long has your company been operational? Has your company been known by any other name(s) in the last ten years? Is your company a division or subsidiary of a parent firm?
2. Please list the address(es) of the office(s) that will service this account.
3. Do you have an affiliation with other entities either directly or indirectly? Please explain the nature of these arrangements and, if available, prepare a chart showing the affiliations and ownership connections.
4. How many employees are currently employed at your company (at the offices that would be serving FW), including clerical and support staff? What was the total 12 months ago? Is your firm anticipating any expansion or reorganization in the next year? If yes, please explain.
5. Do you plan to sub-contract any portion of the services required to another firm? If yes, please answer the following:
 - Which of the services would you plan to sub-contract and to which company?
 - Would you take responsibility for the quality, timeliness and accuracy of these services?
 - Describe how your staff would interface with the staff of the sub-contractor(s).
6. Provide a sample of the contract that you would propose for FW. What is the term of each contract that would apply to this bid and what are its termination provisions?
7. Do you agree that FW has the right to cancel the contract at any time should it find the actual services provided by your organization to be unsatisfactory? Do you agree to include this provision in your contract?

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8. Please designate the individual(s) that will represent your organization in the noted capacities. Include name, title and address of each individual along with a brief description of his/her qualifications and experience.
- a) the individual(s) representing your company during the proposal process
 - b) the individual responsible for overall account management
 - c) the individual responsible for day-to-day client service
 - d) the individual responsible for claims management
 - e) the individual responsible for utilization review and case management services
 - f) the individual responsible for stop loss claims filing, renewals and annual marketing of the stop loss

5.2 Financial Profile

1. Give a brief description of your company's financial structure, including ownership and general financial condition.
2. Provide the latest annual report or other financial reports (including audited financial statements) that indicate the financial position of your organization. If your company is privately held, list owners with 5 percent or more of equity.
3. Is your company or subcontractor(s) currently involved in any litigation or are there any outstanding legal actions pending regarding the proposed product/services? If yes, please explain the nature and current status of the action(s). Are there any outstanding legal actions pending that would affect your ability to provide the requested services? If yes, please explain.
4. Has your company, its affiliates or any of its staff, principals or owners ever been subject to a governmental or criminal investigation involving the requested services? Please describe.
5. In the past five (5) years has your firm or any client administered by your firm ever sustained a fidelity loss or claim? If yes, please provide details.
6. Indicate your firm's liability insurance limit with regard to errors, omission, negligence, etc. Please include deductible and annual limit (per occurrence and aggregate) information and name of insurer. Please note that if you are selected as a finalist you will be required to furnish a copy of all such policies.
7. Are there any pending investigations, regulatory proceedings, license renewals, litigation or legal actions concerning your organization or any employee of your company? If so, please explain the nature and current status of the action(s).
8. Please provide a sample of the invoice that will be used to bill FW for the services proposed in this RFP. Confirm that your organization will provide detailed monthly invoices to FW.

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5.3 Organizational Experience and References

1. Describe your company's experience administering the requested services for public entities. Please list the number of years your company has provided each of the following administrative services to public sector plans.

Service	Number of Years of Experience
Adjudicating Claims on the proposed PPO network	
Eligibility Administration, including COBRA Administration	
Claims Administration	
Utilization Review and Case Management Services	
Subrogation and Recovery Services	
FSA Administration	
Stop Loss Renewal and Marketing Services	

2. Has any client terminated the administration services of your firm during the past two years? If so, please provide the names along with the reason for each termination. May they be contacted if you are selected as a finalist for this RFP?

5.4 Plan Administration

1. Please confirm that you have reviewed the SPD included in the RFP and that you have administered similar plans of benefits for other clients.
2. Please confirm that you are able to administer the benefits exactly as outlined in the SPD. If you are unable to administer any benefit, please describe the benefit that you cannot administer.
3. Describe your COBRA administration procedures. How do you identify Qualifying Events? Describe all functions that are automatically tracked and/or processed through your COBRA system.
4. Describe the quality controls, auditing and peer review mechanism in place for your organization's claim-processing department? Do you use internal or independent/outside auditors?
5. Does your organization have a fraud detection unit or program in place? If so, please describe. What percent of claims submitted are denied because of misrepresentation and fraud? Is the fraud detection program performed by a subcontractor and is there a separate fee for this benefit program?

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6. How does your organization avoid duplicate payments of the same claim? If duplicate payments or overpayments are made, what are your procedures for recovery of the overpayments or duplicate payments?
7. Please describe your process for measuring the accuracy of your claims processing.
8. How do you define a processed claim transaction (e.g. draft issued, draft cleared, claim form submitted)?
9. What do you do with claims that you receive that do not relate to a person who is eligible for benefits under your client's plan?
10. Explain the method in which medical review consultants are used and describe their qualifications and affiliations.
11. Explain your firm's COB procedures. Does your firm pursue COB prospectively or retrospectively to payments?
12. Do you have the capability to transmit and receive data electronically? Please describe your current capabilities.
13. Please describe your appeals process including intake process, and follow up investigations.

5.5 Customer Service

1. Describe how general account service would be handled. What is the location of the office that would provide day-to-day account service? Who would be responsible for daily ongoing administrative issues? How would account service be coordinated?
2. Provide a brief overview of the administration office you would propose for FW. How long has it been operational? What types of benefit plans does it handle? What is the expected daily workload per processor?
3. Do you require your staff to complete ongoing industry training? If so, please describe the typical training expected of claims processors and call center staff.
4. Please describe your current Internet capabilities as they relate to customer service including what features are available, what information can be accessed by FW and what information can be accessed and updated (self-service) by participants using the Internet. Would FW be able to access and download member data and reports via the Internet?
5. How are your customer services provided (telephone, web, IVR, etc.)?
6. Please provide the hours of operation for your customer-service call centers. Will you guarantee customer service call center availability from 8:00 am to 6:00 pm Monday-Friday at a minimum?

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7. Do customer service representatives have on-line access to real-time claim status information?
8. Is customer service provided in the same location as claims processing?
9. Has your web portal experienced excessive downtime and slow response time in the past twelve months? Please provide reports which demonstrate the availability and response time of your web portal for the 2014 calendar year.

5.6 Computer System, Support and Security

1. Please describe your benefits administration system (hardware, platform, software, etc.). What other software is utilized (i.e., benefit calculations)? Describe how you would track and capture eligibility information, benefit calculations, benefit payments, etc., for FW. Please be specific.
2. Does your system have integrated imaging/scanning and workflow capabilities?
3. Please indicate the extent to which your administration systems are automated and the capabilities of the systems you would propose for FW. Could the systems be modified to suit the individual needs of FW, if needed?
4. Describe your policy for transitioning client data and files in the event of client termination.
5. Do you have a system and data file back-up policy? If yes, please outline. If it includes off-site storage of back-up media, please give address of such site and frequency.
6. Describe your disaster recovery program and business resumption strategy.
7. Describe your quality assurance controls when loading plan designs into the system.
8. Describe the testing and review performed by IT Staff during the implementation.
9. Describe your procedure for testing any upgrades that may be made to the systems that would be utilized by FW.
10. Do you have programmers on staff? If so, please describe the staffing of your IT department.
11. Has your organization been the target of a cyber-attack?
12. Has your organization had a known data breach or loss of customer data? If so, please describe.
13. Describe your data security policies including what notifications would be provided to FW and their employees in the event of a data breach. What relief would you offer FW and its employees in the event of a data breach or loss of personal information?

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14. Does your organization have policies and practices in place to defend its systems and data from potential cyber-attacks and data breaches?
15. Please describe or attach a copy of your document retention policy. Do you charge your clients a fee for hard copy and/or electronic document storage?
16. How is security set up in the system? What are the different levels of security?
17. Is your system database encrypted?
18. Are data backups encrypted? Do you store backup media off-site and if so, how are they transported off site?

5.7 Reporting Capabilities

1. Describe your reporting capabilities. Reports should include the following:
 - Monthly/quarterly/annual summary report showing expenses by department (i.e. actives, pre-65 retirees, cobra etc.);
 - Monthly activity reports showing the types of transactions/disbursements processed, broken down by category; such as inpatient hospital, physician office visits, etc. and category.
 - Monthly utilization review and case management statistics by category.
2. Please describe any other reports you would be prepared to provide or that you provide as part of your standard reporting package. Provide samples of these reports and detail the frequency and availability of each report
3. Would you provide ad-hoc data reports at FW's request? If so, please describe your ad-hoc data reporting capabilities. Would there be additional fees for these reports? If so, please provide in Volume 2 your pricing schedule for any reports not included in your quoted fees.
4. Would FW have on-line access to your reporting system in order to produce their own ad-hoc reports? Describe any training that would be needed by FW to use your systems. Would any required training be provided on-site at FW and at no additional cost?
5. Describe any benchmarking data that would be available to FW for use in comparing their claims and utilization to regional/national results.

5.8 Audits

1. Describe the typical services you provide in support of an external audit. Confirm that FW's data would be made readily available to FW or its authorized agents for the purposes of an audit as required and that any requested audit data would be provided fully and completely within 3 weeks of the request.

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5.9 HIPAA Administration Simplification Provisions

1. What is the date of your latest HIPAA Security Risk Assessment?
2. Describe the process used by your company to comply with HIPAA EDI, Privacy, and Security requirements. Have you received external or independent certification regarding your HIPAA compliance?
3. Who is the key individual in your organization responsible for compliance with the HIPAA Administrative Simplification provisions? Please identify that individual by name and title.
4. Regarding the HIPAA/HITECH Final Rule, have you identified all subcontractors affected and have you executed Business Associate Agreements with them?
5. Describe your HIPAA EDI compliance solution relative to providing eligibility data to vendors.
6. Is your staff trained on all Privacy and Security requirements? Describe your training program and enforcement policy.
7. Does your system produce sufficient audit trails to satisfy the HIPAA Privacy and Security regulations?
8. Are all electronic transmissions of PHI, including eligibility files, authorizations, reports, etc., encrypted or sent via secure means? Which encryption methods do you support for e-mails and file transmissions? Please describe.
9. What are your procedures for data destruction prior to hardware and media disposal?
10. Are you compliant with the HIPAA 5010 data set for electronic transactions? If no, please explain why.
11. Describe your capabilities for sending secure email transmissions.

5.10 Utilization Review and Case Management Services

1. Please describe in detail the utilization review and case management services that your organization proposes to offer FW.
2. What criteria are used to identify cases for medical case management?
3. During case management, what services does your firm's staff routinely perform on each case?
4. How often does your firm send summary data on case management services to the client?
5. How and when are medical specialists involved in the case management process? Describe their credentials.

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6. On cases where an adverse decision has been rendered, does your firm agree to retain UR and medical information files for at least a twelve-month period or any period as requested by FW?
7. Is your firm willing to assist FW if a dispute arises over payment/nonpayment for health care services which your firm recommended were not medically necessary, appropriate and/or reasonable?
8. Does your proposed utilization management firm have any affiliations with other business entities? If yes, explain the nature of the affiliation.

5.11 Stop Loss

1. Please confirm that you will market FW's specific Stop-Loss renewal effective January 1, 2016 at the current specific deductible of \$200,000 and at least two additional deductible levels. Stop Loss quotes should provide options both with and without prescription drug coverage.
2. Describe your stop loss administration process, including the tracking and reporting of large claims to the stop loss vendor, the renewal process, and how you coordinate and manage relationships with stop loss carriers.
3. Does your firm offer any arrangements with stop loss carriers? If yes, please list which vendors your organization has preferred relationships with.
4. Please describe any compensation that you may receive from the stop-loss vendors

5.12 Out-of-Network Negotiations

1. Explain how you handle out-of-network negotiations with insurance carriers.
2. Does your firm provide its clients access to a secondary "wrap-around" network?

5.13 Health Savings Account

1. Describe any experience your firm may have had with the administration of Health Saving Accounts (HSA).
2. Does your firm have a banking relationship to enable administration of Health Savings Accounts?
3. Please describe the fee structure associated with providing HSA services.

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5.14 Pharmacy Benefit Management

1. Please list the PBMs where you have contractual relationships. Please include the date that your contractual arrangement with each PBM is set to expire.
2. For the PBM that you are recommending to FW, please complete the following table.

a. Parent Company	
b. Total number of pharmacies included in your network	
c. Year PBM Established	
d. Number of PBM Employees	
e. Membership count (total covered lives)	
• % from top 10 clients	
f. Claims processed (most recent 12 months)	
• Retail	
• Mail Order	

3. Please describe the PBM account team proposed to work with the FW.
4. Please list the member PBM services available via the member website.
5. Are members able to look up the cost of drugs on your member website?
6. Are members able to compare the cost of drugs between pharmacies on the website and does the cost include U&C by pharmacy?
7. List any pharmacy chains excluded from your proposed retail pharmacy network.
8. Confirm that FW will receive a 90-day notice of any event or negotiation that may cause a disruption in the retail pharmacy network access.
9. Provide a copy of your proposed Formulary.
10. Please describe the process of communicating changes to the Formulary to both FW and plan participants.
11. Does your Formulary currently exclude any prescription drugs from coverage? If so, please provide a list.
12. Please confirm that 100% of the rebates will be returned to FW.
13. Provide a sample client management / performance report and the frequency that reports will be delivered. Are you able to provide FW with detailed claim-by-claim prescription data which would include all aspects of pricing, but would also be de-identified? Will you provide details on pharmacy payments versus plan payments.

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14. Are you able to provide alternative pricing on a transparent (pass-through) basis? Please describe your transparency pricing alternative.
15. In the standard pricing model, please describe the pricing differential between prescription cost billed to FW and cost reimbursed to pharmacies.
16. Please confirm that your retail pricing includes MAC pricing and indicate the percentage of generic drugs that have a MAC price (based on AWP dollars).
17. Do you offer MAC pricing at mail order? If not, please describe how you will ensure generic pricing at mail will be equal to or better than retail.
18. How does the MAC pricing for the plan being offered to FW compare to the MAC pricing for the Federal Employee Health Program and Medicare?
18. Please confirm that the PBM agrees that FW has the right to audit PBM performance, at any time during the year, with the auditor of their choice, in order to verify contractual compliance, including discounts, fees, rebates, and performance guarantees. Please list any fees associated with an audit request.

5.15 Medical PPO Network

1. Please list the Medical PPO networks that your firm currently has established arrangements with.
2. What PPO network arrangement are you recommending for FW?
3. What are the expected PPO discounts using the recommended arrangement by line of coverage (Inpatient Hospital, Outpatient Hospital, Physician, etc.)? Are you able to provide a PPO discount guarantee? If so, please describe.
4. If requested, are you able to perform a claims repricing and disruption analysis based on FW's prior claims history?
5. a) Do you notify FW and/or participants if a network physician terminates his/her contract during the plan year? b) How and when are participants notified? c) What happens to patients that are receiving on-going treatment from that network physician?
6. Can the FW or Plan participant nominate providers to be considered for inclusion in the network panel? If so, what is the procedure for FW and/or participant? What is the average length of time for review of these nominations?

5.16 Implementation and Transition Issues

1. Please confirm that you will be able to successfully implement the required FW programs effective January 1, 2016.
2. Based upon past experience from other cases you have taken over directly from another TPA, what should FW expect as far as the conversion process is concerned?

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3. Do you have a special team and/or department assigned to handle the transition of new clients?
4. Provide an implementation schedule including dates, tasks and personnel responsible to successfully implement FW's programs effective January 1, 2016. What are the major milestones and events associated with your implementation plan? Describe the process and include a timetable, beginning with contract award to effective date. Your response should address the following:
 - Steps required to implement the program and timeframes;
 - Data requirements;
 - Production and distribution of transition announcements and other communications, enrollment materials, etc.; and
 - Contacts and personnel assigned to each step of the implementation process.

End Section 5

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SECTION 6

6. Proposed Fees – Volume 2

Per capita and/or monthly fees should include all administration services outlined in this request for proposal. Please ensure that all services are accounted for and indicate “Included” in the appropriate fee box. Note any services that you would not provide or that are not included in your fees.

Please be advised that if your quotes are not “firm” or “final” you must clearly indicate it in your proposal and explain exactly what information will be needed in order for the quote to become final. In providing fee estimates please keep in mind the following:

- If you are quoting on a per-capita basis, please use a headcount of 500 subscribers on all calculations;
- Any set-up fees to transfer records from the current TPA’s system and/or manual records to your recordkeeping system should be listed separately; and
- Any special fees or charges of any kind for services or supplies that will not be covered by your proposed per-capita or monthly fee must be disclosed in your proposal. Please describe any services or supplies you will not cover.

6.1 Program Questionnaire

1. Please confirm that:

	Confirmed	Not Confirmed	Comments
All fees are guaranteed for 24 months from contract inception. Fees are guaranteed for 12 months upon renewal after the initial contract expiration (at FW’s option). All future rate adjustments will be subject to annual renewal (e.g., at least 12 months) in the absence of benefit revisions	<input type="radio"/>	<input type="radio"/>	
All future rate adjustments will be communicated at least 90 days in advance of the effective date	<input type="radio"/>	<input type="radio"/>	
Fees are payable at the end of the 30-day grace period	<input type="radio"/>	<input type="radio"/>	
Will you agree to Performance Guarantees with financial penalties?	<input type="radio"/>	<input type="radio"/>	
Fees should include the cost of all routine printing and mailing such as monthly benefit checks, annual statements, etc.	<input type="radio"/>	<input type="radio"/>	
Guarantee a post-termination administrative fee	<input type="radio"/>	<input type="radio"/>	

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of no more than your last month's monthly fee			
Transfer all records to any successor administrator within 30 days of termination in a form that is acceptable to the recipient at no charge	●	●	
Proposed fees include the cost of the annual stop-loss renewal review, marketing of the stop-loss contract on an annual basis to a minimum of four stop loss carriers as well as the cost of any and all stop-loss reporting that may be required by the stop-loss vendor			

2. Please describe how you handle the banking arrangement for your clients. What types of accounts does your organization propose for FW and what is your strategy for eliminating or minimizing banking fees?

Plan Administration including eligibility, enrollment, COBRA/self-pay administration, subrogation services, maintenance and updating of PPO schedules as provided by vendor, claims processing for medical, dental, vision and prescription drugs for 500 subscribers. Please complete the Fee exhibit below:

SERVICE	MONTHLY FEE	
	January 1, 2016 – December 31, 2016	January 1, – December 31, 2017
1. Medical Administrative Fees		
2. Dental Administrative Fees		
3. Prescription Drug Administrative Fees		
4. Vision Administrative Fees		
5. Network Access Fee – Proposed PPO		
6. PPACA Reinsurance Fee Calculation & Remittance		
7. NY HCRA Reporting/Remittance and other states surcharge administrative fee		
8. Monthly Bank Reconciliation Fee		
9. Other Administrative Fees: <ul style="list-style-type: none"> • Communication Materials • Postage • Printing of Forms 		
10. Stop loss administration including marketing of stop loss to vendors on an annual basis as well as any and all claims reporting required by the stop loss contract.		

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SERVICE	MONTHLY FEE	
	January 1, 2016 – December 31, 2016	January 1, – December 31, 2017
11. COBRA Administrative Fees		
12. FSA Administrative Fees		
13. Pre-Certification Fees		
14. Case Management Fees		
15. Total Monthly Fees		
16. Total Annual Fees		

6.2 Prescription Drug Pricing and Rebates

Please complete the following table showing the discounts and terms that your organization has contracted with for the PBMs you are proposing in this RFP. Please duplicate the chart as needed for each PBM. If the contracted terms differ for the 2016 and 2017 contract year, please show the terms for each year separately for each PBM. Columns marked "AWP Discount" are to be completed using a discount from 100% AWP and separate dispensing fees. Terms should reflect the AWP unit cost dispensed at the point of sale, and post September 26, 2009 AWP rollback.

Notes:

1. Post September 26, 2009 AWP rollback
2. Include single-source generics.
3. Rebates are 100% pass-back with stated minimum guarantees

Broadest Retail Network (List any Major Retail Chains Excluded)	AWP Discount Retail Supply Up to 30 days	AWP Discount Retail Supply 31-90 days	AWP Discount Mail Supply 1- 90 days
Brand Drugs			
• Discount from AWP for all brands			
• Dispensing Fee Per Rx			
Generic Drugs[2]			
• Discount from AWP for all generics (composite discount of MAC and Non-MAC prices, discounted AWP, or usual and customary retail price)			
• Dispensing Fee Per Rx			
Rebates[3]			
• Three Tier Plan—Per Brand Rx			

Are any prescriptions excluded from the guaranteed prescription drug and specialty pharmacy program pricing as described in your responses in the Financial Sections above? If so, attach a document in the

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format provided below, and provide a minimum guaranteed AWP discount for these prescriptions at both retail and mail. Otherwise, your above responses will be assumed applicable to all prescriptions.

6.3 Specialty Drug Pricing and Rebates

Please provide your organization's definition and qualification criteria of a "specialty drug product".

Provide an AWP-based pricing list of all specialty pharmaceuticals that your company dispenses and distributes to providers and patients. Your pricing must include adequate supplies of ancillaries such as needles, swabs, syringes, and containers. The following items must be included in your list:

1. Product Name
2. Therapeutic Group/Therapeutic Category
3. Guaranteed Minimum AWP Discount for all specialty pharmacy program prescriptions for both Open and Exclusive specialty arrangements

Complete the following tables:

Open Specialty Pharmacy Program	2016	2017
Dispensing Fee—Per Rx		
Aggregate Guaranteed Discount from AWP		
Administrative Fee—Per Rx		
Minimum Rebate Guaranteed Rebate - per Rx		
Exclusive Specialty Pharmacy Program	2016	2017
Dispensing Fee—Per Rx		
Aggregate Guaranteed Discount from AWP		
Administrative Fee—Per Rx		
Minimum Rebate Guaranteed Rebate - per Rx		

Please provide the open and exclusive guaranteed specialty discount guarantees.

RFP # 15-02

6.4 Prescription Drug Services

Please complete the chart below indicating which services can be provided by your organization and/or the PBMs that you are proposing for FW. Not all services listed below are included in the current plan. Please duplicate the chart as needed.

Prescription Drug Services Included in Administrative Fees	1/1/2016-12/31/2016	1/1/2017-12/31/2017
Retail/Mail Administrative Fee per paid claim		
Services to be included in fees above:		
Toll Free Phone Lines	Yes/No	Yes/No
Monthly Data Feeds to the Client or Designee(s)	Yes/No	Yes/No
Prospective /Concurrent/Retro DUR	Yes/No	Yes/No
Standard Reports	Yes/No	Yes/No
Ad Hoc Reports	Yes/No	Yes/No
COB Program	Yes/No	Yes/No
Mandatory Mail Program	Yes/No	Yes/No
Dose Optimization Program	Yes/No	Yes/No
Prior Authorization Program	Yes/No	Yes/No
Step Therapy Program	Yes/No	Yes/No
Quantity Limitations	Yes/No	Yes/No
Custom System Overrides	Yes/No	Yes/No
Annual EOB Statements	Yes/No	Yes/No
Retro Termination Letters	Yes/No	Yes/No
Group Coding	Yes/No	Yes/No
Drug Notification Letters	Yes/No	Yes/No
Formulary Administration/Management	Yes/No	Yes/No
ID Cards	Yes/No	Yes/No
Pharmacy Directories and other enrollee materials	Yes/No	Yes/No
Standard 1 st level appeals processing	Yes/No	Yes/No
Standard 2 nd level appeals processing	Yes/No	Yes/No
Urgent Appeals Processing	Yes/No	Yes/No
Overrides	Yes/No	Yes/No
Audit Recovery Fees	Yes/No	Yes/No
Services not included in fees above (i.e., services marked "N" above) (show fees separately):		

RFP # 15-02

Prescription Drug Services Included in Administrative Fees	1/1/2016-12/31/2016	1/1/2017-12/31/2017
Other		

6.5 First Year Set-Up Fees

Service	Set-Up Fees (January 1, 2016- December 31, 2016 Only)
1. Initial Set-Up Charge	
2. Development of Communication Materials (e.g., transition announcement letters, etc.)	
3. Other (Specify)	
Total Set-Up Fees	
Are these fees included in the Summary of Fees chart above?	

RFP # 15-02

6.6 Fees and Services

List of all services that are included in fees (Please specify all services as this list will be included in a contract agreement should your firm be selected)

Any special fees, charges or expenses of any kind not included in the base administrative fees

List of optional services not included in fees, along with associated fees

RFP # 15-02

6.7 Performance Standards and Guarantees

Please complete the chart below noting any performance guarantee that you would be willing to offer FW.

Standard Description	Standard Description Standard/Goal	% of Fees at Risk	Willing to Comply
Claim turnaround time	> 90% - 95% within 10 business days or within 14 calendar days		
Financial accuracy	>99%		
Payment accuracy	>97%		
Time to answer	>90% answered within 30 seconds		
Abandonment rate	>97% of calls answered before abandonment		
Eligibility accuracy	>97%		
Eligibility processing	Eligibility will be updated within 3 business days of receipt of a usable data		
Management reports	Reports provided by agreed upon schedule		
Website availability	Except for agreed upon maintenance downtimes, web portals will be available 24/7, 365 days a year.		
ID Card	Initial enrollees to receive ID cards no later than December 1 st . Ongoing ID cards to be received within 14 days of receipt of enrollment.		

End Section 6

RFP # 15-02

ATTACHMENT A

REFERENCES

OFFERORS' NAME: _____

1. **COMPANY NAME:** _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (____) - _____ - _____

FAX: (____) - _____ - _____

E-MAIL: _____

2. **COMPANY NAME:** _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (____) - _____ - _____

FAX: (____) - _____ - _____

E-MAIL: _____

3. **COMPANY NAME:** _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (____) - _____ - _____

FAX: (____) - _____ - _____

E-MAIL: _____

OFFERORS' NAME: _____

RFP # 15-02

4. **COMPANY NAME:** _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (____) - _____ - _____

FAX: (____) - _____ - _____

E-MAIL: _____

5. **COMPANY NAME:** _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (____) - _____ - _____

FAX: (____) - _____ - _____

E-MAIL: _____

RFP #15-02

**ATTACHMENT B
TRANSMITTAL FORM**

In compliance with this Request for Proposal and to all the conditions imposed therein and hereby incorporated by reference, the undersigned offers and agrees to furnish the goods and/or services described herein in accordance with the attached proposal and as may be mutually agreed upon by subsequent negotiation.

Company Name (printed)		Federal ID Number	
Street (printed)		Telephone:	
City, State, Zip (printed)		Facsimile:	
Printed	Title	E-mail:	
Signed	Dated	F.O.B.: (Shipments are FOB Destination unless otherwise specified)	
<p>Pursuant to Title 13.1 or Title 50 of the Virginia Code provide the identification number issued to your firm by the Virginia State Corporation Commission (VSCC) in the space provided below, If your firm is not required to be authorized to transact business under Title 12.1 or Title 50, or any other law; provide a statement why your firm is not required to be so authorized.</p> <p>VSSC ID Number: _____</p>			
<p>If you do not have a VSCC identification number, explain why it is not required in the space below:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>			

ATTACHMENT E

CLAIMS COUNT AND CALL CENTER USAGE

Fairfax Water Claims and Enrollment			
Calendar Year 2013			
Benefit Coverage	Claims Paid	# of Claims	Subscribers
Medical	\$4,102,480	14,872	437
Rx	\$1,448,707	14,811	437
Dental	\$436,724	2,036	437
Vision	\$46,425	235	437
Total	\$6,034,336	31,954	437
Calendar Year 2014			
Medical	\$4,654,080	15,144	485
Rx	\$1,638,740	16,712	485
Dental	\$499,725	2,170	485
Vision	\$48,202	312	485
Total	\$6,840,747	34,338	485

The increase in subscribers in 2014 over 2013 was due to the acquisitions of two public water utilities resulting in 60 additional new employees.

Fairfax Water 2014 Monthly Call Volume	
Jan-14	329
Feb-14	338
Mar-14	320
Apr-14	375
May-14	294
Jun-14	350
Jul-14	319
Aug-14	320
Sep-14	360
Oct-14	359
Nov-14	315
Dec-14	417
Total	4,096

RFP #15-02

CLERK OF SUPERIOR COURT
COUNTY OF WASHINGTON
1000 1ST AVENUE, N.W.
SEATTLE, WA 98104

EXHIBIT B

[Attach TPA's Proposal dated April 21, 2015 in Response to RFP 15-02]

EXHIBIT C

[Attach TPA's Answers in Response to Questions of Plan Sponsor]



**Fairfax Water Follow-Up Questions
Third Party Administration Services for Health Plan
RFP 15-02**

1. Passive Dental Network

- A. Confirm that you have access to a Passive Dental Network.**

Confirmed, we have access to a Passive Dental Network. You can choose from Cigna's Dental PPO SA or Dental PPO SA Plus, and build your benefit plan as Passive. There are no additional fees associated with Passive plans.

Fairfax Water may access a purely passive dental network at 30% of savings.

- B. Is this included in your dental claims administration charge? If not, what is the associated cost?**

Our Cigna dental network access fee is \$1.25 pepm.

- C. What is the average in-network discount for the Northern VA area?**

For the SA Plus the average discount is 35.2%, average discount is 40.2%

- 2. Would you be able to offer the Aetna network to Fairfax Water?**

We would not be allowed to offer the Aetna ASA medical network to Fairfax Water. Aetna ASA's rules of engagement do not allow them to quote on groups that are currently with Meritain.



3. What other PBMs do you have a contract with? Can you utilize a different PBM in conjunction with the Cigna network?

HealthSCOPE Benefits' relationships with the top Pharmacy Benefit Management firms will provide nearly "transparent" pass through of pricing. Our preferred relationships are fully integrated into HealthSCOPE's medical, data and financial management.

Due to our large client base, we are able to negotiate preferred fees with select Pharmacy Benefit Management (PBM) firms, these firms include (but are not limited to) Express Scripts, Caremark, LDI, Catamaran & Cigna. Each of these PBM's has an extensive national retail pharmacy network (over 60,000 participating pharmacies, including all major national and regional chains, as well as a significant percentage of independent pharmacies), and offers mail-order services. The full value of the PBM contract accrues to the benefit of the client, as we gain no additional revenue through the contract.

If accessing the Cigna OAP Medical Network, Cigna Rx must also be utilized.

4. Your response indicates that 100% of the prescription drug rebates will be returned to Fairfax Water; however, the prescription drug fee table indicates a fixed dollar amount per brand claim for the rebates. Please confirm 100% of rebates are returned to the client and the per claim rebate figure should be a minimum amount.

Our offer today indicates that the rebates are based on the flat dollar amount as indicated; the rebates reflected are not minimums.

The rebates we are offering are a fixed amount per branded claim. If you have a 100 brand claims you will get 100 x \$X as your rebate dollars. Utilizing fixed rebates enables us to spread value to other points within our pricing offer such as deeper AWP discounts on generics and lower dispensing fees. This balances the financial offer as utilization and drug mix vary – offering a balanced pricing structure allows clients to benefit from increasing use of generics while still getting some of the rebates on brands.



Plan designs are usually set up to encourage generic us whenever possible as this is the lowest cost to plan and member – this takes away from rebate dollars regardless if they are fixed or shared 100%. If we offer 100% of rebates then the pricing offer would need to be reviewed and AWP discounts may not be as deep leaning the offer more heavily laden on rebates which will decrease if members are utilizing more generics and not brands.

5. What is the associated fee for HS8 DataSCOPE?

HSB DataSCOPE™ is included within our medical administration fee.

6. Describe any associated fees that Fairfax Water may incur for using benchmark data in reporting.

There would be no charges incurred.

7. Please confirm that the fees associated with the FSA process are billed on a per participating employee per month basis and not charged for every employee eligible to participate.

Confirmed, FSA is billed on a per participant per month and not charged for every employee eligible to participate.

8. We will be sending you a repricing file (Exhibits B and C) once we have gotten a signed NDA from your firm. For each line included in Exhibit C, you should note the repriced amount (PPO allowed amount) that would pertain to the claim. Your final file should include all claim lines and the total eligible amount in your file should total \$9,412,619. If you cannot reprice a claim line for any reason then your PPO allowed amount for that line should equal the eligible amount provide in the file. Please also complete Exhibit B summarizing the results of your discount file. Please complete Exhibit D – Disruption Analysis noting which providers will be in the network you are proposing for Fairfax Water. If you expect any changes in your network between now and January 1, 2016, please note this in your response. As an example, if you know that a provider is currently in your proposed network as of May 28, 2015 but will be terminating as of September 1, 2015, you should respond that that provider will NOT be in your network as of January 1, 2016.

We will provide the claims repricing by June 15th, as requested.



9. Based on the repricing information included with this email, please detail the PPO discount guarantees that you are willing to offer.

The discount guarantee will be provided with the repricing results.

10. Please provide Best and Final pricing in Exhibit A of the attached. Please respond to each individual line. Do not bundle charges. Do not indicate that one component is included in another line's fee. Include any additional fee that may be billed by pharmacy benefit managers, dental networks, etc. Your total per employee per month rate must be equal the total fee that will be shown on the monthly invoice to Fairfax Water and must include all fees that will be billed on a per employee per month basis. Charges that are not billed on a per employee per month basis should be listed separately under Other Fees. Other fees should list any other fees that could be charged to Fairfax Water and the fee basis should be clear (i.e. hourly, per participant, percent of charges, etc.).

Confirmed, please refer to our attached best and final pricing.

EXHIBIT D-
SERVICES, FEES, REBATES, AND DISCOUNTS

The following services, fees, rebates and discounts are effective January 1, 2016-December 31, 2017 unless otherwise indicated below:

Implementation Fee	\$8,500.00 implementation credit
Claims Administration Services Fees:	
• Medical	\$13.95 per employee per month (pepm)
• Dental	\$1.95 pepm
• Vision	\$1.05 pepm
• Pharmacy Interface	\$0.53 pepm
• Initial Standard ID Cards	Included in Implementation Fee
• Replacement Standard ID Cards	\$0.85 per card (full reprint only)
• Plan Documents	Initial document included in Implementation Fee, \$125.00 per hour thereafter
• Stop Loss Procurement	\$0.50 pepm
• Medical Reviews	As charged by the external reviewer; typical charges are \$250.00 to \$350.00 for initial reviews. Additional fees may be charged for specialist reviews or expedited turnaround requests. The fees may also be subject to periodic increases.
DataSCOPE	Included in Medical Claims Administration Services Fee
Network Access Services Fees (not included in above-referenced fee guarantee):	
• Cigna OAP	\$16.85 pepm (effective January 1, 2016-December 31, 2017) \$17.19 pepm (effective January 1, 2018-December 31, 2018) \$17.53 pepm (effective January 1, 2019-December 31, 2019) \$17.88 pepm (effective January 1, 2020-December 31, 2020)
• Dental Network Passive Network	30% of savings
Cigna Payer Solutions Pharmacy Benefits Management Services Fee	
• Hard Copy Eligibility Submission	\$1.00 per record
• Paper Claim Adjudication	\$1.50 per claim
• Additional Access (more than 2 users)	\$500.00 annual charge per user
• Web-Based Customer Reporting	\$100.00 per report
• Ad Hoc Reports	\$150.00 per programming hour
• ID Card Production for Transition Customers	\$1.00 per employee allowance provided back to Plan Sponsor
• Welcome Packet	No charge
• Retail Member Calls	No charge
• Administrative Prior Authorization	No charge
Utilization Management Services Fees (not included in above-referenced fee guarantee):	
• Medical Case Management	\$2.25 pepm
• Inpatient Hospital Precertification	Cigna OAP Network Access Fee

- Specialty Case Management \$125.00 per hour

Communication Materials Printing and postage at cost

Savings Generating Services Fees:

- Subrogation In the event TPA collects a subrogation claim of Plan Sponsor without retaining an attorney to represent the interests of Plan Sponsor, Plan Sponsor will pay TPA a fee for its services under this Agreement equal thirty percent (30%) of the gross amount recovered for such claim.
- Fraud Management/ Enhanced Recoveries In the event TPA collects an Overpayment without retaining an attorney to represent the interests of Plan Sponsor, Plan Sponsor will pay TPA a fee for its services equal to thirty percent (30%) of the gross amount recovered for such claim.
- Medical Bill Review/Credit Balance Recovery 30% of recovery
- Out-of-network Claims Management, Direct Negotiation and Enhanced Negotiation 30% of savings

Flexible Spending Account Claims

Administration Services Fees:

- Medical & Dependent Care Accounts \$3.95 per account per month

Benefit Programming Services Fees:

- Initial No charge during January 1, 2016-December 31, 2016
- Custom \$125.00 per hour

CONTRACT FEE DISCLOSURE

Plan Sponsor acknowledges and agrees that in order to make available the various administrative services required under this Agreement, TPA may enter into contracts with various providers, provider organizations, management organizations, service organizations, vendors and other persons and entities ("Contractors"). These Contractors provide services for and/or obtain services from TPA in connection with the performance of TPA's duties and obligations under this Agreement. In consideration for the services, Contractors may retain and/or be paid certain fees and other compensation and/or may pay certain fees and other compensation to TPA ("Contract Fees"). Contract Fees are based on any number of methodologies, including, but not limited to, administrative fees, electronic payment processing fees, bonus pools, risk sharing arrangements, percentage of savings or recovery, sharing of discounts, volume discounts, and coupon programs.

Plan Sponsor further acknowledges and agrees (i) the Contract Fees are mutually beneficial to Plan Sponsor and TPA, (ii) all Contract Fees paid to TPA represent reasonable compensation for services rendered in connection with this Agreement and shall be retained by TPA for its own account, and (iii) all Contract Fees paid to Contractors shall be retained for their own accounts. Specific Contract Fees paid to TPA will be provided to Plan Sponsor upon request.

**PHARMACY BENEFIT MANAGEMENT SERVICES
CIGNA FBM FEES**

Participating Pharmacy and Mail Service Pharmacy Brand and Generic Drug Rates:

Brand of Retail Network (If not any Major Retail Chains Excluded)	AWP Discount Retail Supply Up to 30 days	AWP Discount Retail Supply 31-90 days	AWP Discount Mail Supply 1-90 days
Brand Drugs			
• Discount from AWP for all brands	AWP-20.00%	AWP-22.00%	AWP-24.00%
• Dispensing Fee Per Rx	\$1.00	\$1.00	\$0.00
Generic Drugs[2]			
• Discount from AWP for all generics (composite discount of MAC and Non-MAC prices, discounted AWP, or usual and customary retail price)	AWP-75.00%	AWP-75.00%	AWP-79.00%
• Dispensing Fee Per Rx	\$1.00	\$1.00	\$0.00
Rebates[3]			
• Three Tier Plan—Per Brand Rx	100% pass-back of earned rebates with \$35.00 per retail brand Rx minimum	100% pass-back of earned rebates with \$35.00 per retail brand Rx minimum	100% pass-back of earned rebates with \$105.00 per retail brand Rx minimum

Open Specialty Pharmacy Program	2016	2017
Dispensing Fee—Per Rx	Retail:\$1.00/Rx Retail Specialty\$2.50 /Rx Mail: \$0.00/Rx Mail Specialty: \$2.00/Rx	Retail:\$1.00/Rx Retail Specialty\$2.50 /Rx Mail: \$0.00/Rx Mail Specialty: \$2.00/Rx
Aggregate Guaranteed Discount from AWP	No guarantees offered at this time	No guarantees offered at this time
Administrative Fee—Per Rx	\$0.00	\$0.00
Minimum Rebate Guaranteed Rebate - per Rx	100% pass-back of earned rebates with \$35.00 per retail brand Rx minimum and \$105.00 per mail order brand Rx minimum	100% pass-back of earned rebates with \$35.00 per retail brand Rx minimum and \$105.00 per mail order brand Rx minimum
Exclusive Specialty Pharmacy Program	2016	2017
Dispensing Fee—Per Rx	Retail:\$1.00/Rx Retail Specialty\$2.50 /Rx Mail: \$0.00/Rx Mail Specialty: \$2.00/Rx	Retail:\$1.00/Rx Retail Specialty\$2.50 /Rx Mail: \$0.00/Rx Mail Specialty: \$2.00/Rx
Aggregate Guaranteed Discount from AWP	No guarantees offered at this time	No guarantees offered at this time
Administrative Fee—Per Rx	\$0.00	\$0.00
Minimum Rebate Guaranteed Rebate - per Rx	100% pass-back of earned rebates with \$35.00 per retail brand Rx minimum and \$105.00 per mail order brand Rx minimum	100% pass-back of earned rebates with \$35.00 per retail brand Rx minimum and \$105.00 per mail order brand Rx minimum

EXHIBIT E

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") by and between HealthSCOPE Benefits, Inc. ("Business Associate") and Fairfax County Water Authority ("Plan Sponsor"), for and on behalf of Plan Sponsor's health plans for which Business Associate provides services (each a "Covered Entity") and the Covered Entity's Administrator ("Plan Administrator"), is effective as of January 1, 2016 (the "Agreement Effective Date") or other date reflected herein.

RECITALS

WHEREAS, the parties have entered into a separate services agreement (referred to herein as the "Services Agreement") setting forth the duties and responsibilities of the parties relating to the services provided by Business Associate for Covered Entity;

WHEREAS, the parties wish to disclose certain information to each other pursuant to the terms of this Agreement and the Services Agreement, some of which may constitute Protected Health Information (defined below), and wish to enter into a business associate agreement that meets the requirements of current law concerning the handling and disclosure of individual health information;

WHEREAS, Covered Entity and Business Associate intend to (i) protect the privacy and provide for the security of Protected Health Information disclosed pursuant to this Agreement and the Services Agreement and (ii) comply with applicable transaction and code requirements set forth in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as most recently amended by the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services ("HHS") (collectively "HIPAA") and other applicable federal and state laws; and

WHEREAS, the parties acknowledge that certain federal or state laws may take precedence over HIPAA and agree that this Agreement, the operational requirements hereunder, and the Services Agreement shall be interpreted to enable the parties to comply with HIPAA, the Privacy Rule (defined below) and other applicable federal or state law.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement and the Services Agreement, the parties agree as follows:

1. **Definitions.** In addition to the definitions located elsewhere in the Services Agreement, the following shall apply to this Agreement:

- a. **"Agent"** shall mean an agent of the Business Associate other than a Subcontractor.
- b. **"Breach"** shall mean the acquisition, access, use or disclosure of Unsecured Protected Health Information in a manner not permitted under Subpart E of 45 C.F.R. Part 164 that compromises the security or privacy of such Protected Health Information (within the meaning of 45 C.F.R. Section 164.402).
- c. **"Designated Record Set" or "DRS"** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- d. **"Electronic Protected Health Information"** shall mean the information identified in subsections (i) and (ii) of the definition of "protected health information" contained in 45 C.F.R. Section 160.103 of the Privacy Rule.
- e. **"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 and the Genetic Information Nondiscrimination Act" published at 78 Federal Register 5566 (January 25, 2013).

- f. "HHS Transaction Standards Regulation" shall mean 45 C.F.R. Sections 160 and 162.
- g. "Individual" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).
- h. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- i. "Protected Health Information" or "PHI" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103, including such information created or received by Business Associate from or on behalf of Covered Entity.
- j. "Required by Law" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.103.
- k. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or designee.
- l. "Security Incident" shall mean, as provided in 45 C.F.R. Section 164.304, any attempted or successful unauthorized access, use, disclosure, modification, or destruction of Electronic Protected Health Information created, received, maintained or transmitted on behalf of the Covered Entity, or any successful interference with system operations in an information system related to such Electronic Protected Health Information.
- m. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164.
- n. "Subcontractor" shall have the same meaning given to it in 45 C.F.R. Section 160.103.
- o. "Unsecured Protected Health Information" means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology as provided in 45 C.F.R. Section 164.402.

2. Permitted Uses and Disclosures of PHI. Business Associate agrees not to use or further disclose PHI other than as permitted or required hereunder, or as required by law. Except as otherwise limited in this Agreement or by law, Business Associate may: (a) use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Services Agreement between the parties and in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by a Covered Entity; (b) use or further disclose PHI to carry out the legal responsibilities of Business Associate; (c) conduct any other use or disclosure permitted or required by HIPAA or applicable federal or state law; and (d) use PHI for the proper management and administration of Business Associate. Notwithstanding the above, Business Associate shall not use and/or disclose PHI that is genetic information for underwriting purposes in accordance with 45 C.F.R. Section 164.502(a)(5).

3. Obligations of Business Associate.

a. Appropriate Safeguards. To comply with Subpart C of 45 C.F.R. Part 164, Business Associate shall use reasonable and appropriate physical, technical, and administrative safeguards (i) to prevent use or disclosure of PHI other than as permitted under this Agreement or Required by Law and (ii) to reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity.

b. Reporting of Improper Use or Disclosure. Business Associate shall promptly report in writing to Covered Entity (i) any use or disclosure of PHI not provided for by this Agreement upon becoming aware of such use or disclosure and (ii) any Security Incidents, as described in 45 C.F.R. Section 164.314(a)(2)(i)(C), upon becoming aware of such Security Incident. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of (i) any use or disclosure of PHI by Business Associate or its agents or subcontractors in violation of the requirements of HIPAA or this Agreement or (ii) any Security Incidents of Business Associate or its agents or subcontractors.

c. **Reporting of a Breach.** Business Associate shall promptly notify the Covered Entity in writing of a Breach, but in no case later than ten (10) business days following discovery of a Breach. This notification will include, to the extent known:

- (i) the names of the individuals whose PHI was involved in the Breach;
- (ii) the circumstances surrounding the Breach;
- (iii) the date of the Breach and the date of its discovery;
- (iv) the information Breached;
- (v) any steps the impacted individuals should take to protect themselves;
- (vi) the steps Business Associate is taking to investigate the Breach, mitigate losses, and protect against future Breaches; and
- (vii) a contact person who can provide additional information about the Breach.

Business Associate will promptly investigate any Breaches, assess their impact under all applicable state and federal law, and promptly make a recommendation to Covered Entity as to whether notification is required pursuant to 45 C.F.R. Sections 164.404-408 and/or applicable state breach notification laws. Subject to the Covered Entity's prior approval, Business Associate will issue notices to such Individuals, state and federal agencies, including the Department of Health and Human Services, and/or the media as the Covered Entity is required to notify pursuant to, and in accordance with the requirements of applicable law (including 45 C.F.R. Sections 164.404-408). Business Associate will pay the costs of issuing notices required by law and all other remediation and mitigation that is necessary or appropriate to address the Breach. Business Associate shall provide the Covered Entity with information necessary for the Covered Entity to fulfill its obligation to report Breaches affecting fewer than 500 Individuals to the Secretary as required by C.F.R. Section 164.408(e). To the extent provided under 45 C.F.R. Section 164.410(a)(2), a Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate.

d. **Business Associate's Agents and Subcontractors.** To the extent required by 45 C.F.R. Sections 164.308(b)(2) and 164.502(e)(1)(ii), Business Associate shall ensure that any Agent or Subcontractor that creates, receives, maintains, transmits, or to whom it provides PHI on behalf of the Plan, agrees to at least the same restrictions, conditions and requirements that apply through this Agreement to Business Associate for such PHI.

e. **Access to PHI.** Business Associate shall provide access to an Individual, at the request of the Individual or the Covered Entity, to PHI in a Designated Record Set maintained by, or in the possession of, Business Associate in the time and manner required of a Covered Entity under 45 C.F.R. Section 164.524 or as Required by Law. Any denial of access to such PHI determined by Business Associate shall be the sole responsibility of Business Associate, including, but not limited to, resolution or reporting of all appeals and/or complaints arising therefrom. Business Associate shall promptly report all such requests and their resolution to Covered Entity as mutually agreed by the parties. Business Associate shall promptly notify the Covered Entity of any request made to the Business Associate that extends to PHI not in the care, custody or control of Business Associate.

f. **Amendment of PHI.** Business Associate shall make a determination on any authorized request by an Individual for amendment(s) to PHI in a Designated Record Set maintained by, or in the possession of, Business Associate in the time and manner required of a Covered Entity under 45 C.F.R. Section 164.526 or as Required by Law. Any denial of such a request for amendment of PHI determined by Business Associate shall be the responsibility of Business Associate, including, but not limited to, resolution and/or reporting of all appeals and/or complaints arising therefrom in the time and manner required under 45 C.F.R. Section 164.526. Business Associate shall report all approved amendments or statements of disagreement/rebuttals in accordance with 45 C.F.R. Section 164.526. Business Associate also shall promptly report all such requests and their resolution to Covered Entity.

g. **Documentation of Disclosures.** Business Associate agrees to document

disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528. At a minimum, such documentation shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure. Business Associate shall retain such documentation for such period as is set forth in the Privacy Rule or other applicable laws.

h. Accounting of Disclosures. Business Associate agrees to provide to an Individual or the Covered Entity, in the time and manner required of a Covered Entity, with information collected in accordance with Section 3(g) of this Agreement in response to a request by an Individual for an accounting of disclosures of PHI (including, but not limited to, PHI contained within an "electronic health record" as defined in HITECH Section 13400(5)) in accordance with 45 C.F.R. Section 164.528 (as amended by HITECH). Beginning on the date required under HITECH (or such later date as may be established in HHS regulations or other guidance), should an Individual make a request for an accounting of disclosures related to electronic health records (or Covered Entity requests that Business Associate respond to such a request), Business Associate shall comply with a request for an accounting of disclosures made for treatment, payment, or health care operations purposes in accordance with HITECH Section 13405(c) and any HHS regulations or other guidance thereunder. Business Associate shall promptly report all such requests by an Individual and their resolution to Covered Entity.

i. Access to Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, upon reasonable request by Covered Entity, or to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule, Security Rule or other requirements of HIPAA.

j. HHS Transaction Standards Regulation. If Business Associate conducts, in whole or part, standard transactions for or on behalf of Covered Entity, Business Associate will (i) comply, and will require any Agent or Subcontractor involved with the conduct of such standard transactions to comply, with the HHS Transaction Standards Regulation, and (ii) provide such information to, and perform such tests for or on behalf of, Covered Entity as may be necessary or appropriate to enable Covered Entity to file on a timely basis any certification required under the HHS Transaction Standards Regulation for such transactions.

k. Compliance with Security Rules. Business Associate shall:

- (i) use appropriate physical, technical and administrative safeguards to reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity;
- (ii) report to Covered Entity any Security Incident of which Business Associate becomes aware, upon becoming aware of such Security Incident;
- (iii) ensure that any Agent or Subcontractor to whom it provides Electronic Protected Health Information received from, or created, maintained, transmitted or received by Business Associate on behalf of Covered Entity agrees to at least the same restrictions and conditions that apply throughout this Agreement to Business Associate with respect to such information;
- (iv) enter into a contract or other arrangement with each of its Subcontractors that create, receive, maintain or transmit Electronic Protected Health Information on behalf of Business Associate pursuant to which the Subcontractor agrees to comply with the applicable requirements of the Security Rule; and
- (v) mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Security Incident relating to Business Associate or any Agent or Subcontractor.

1. HIPAA Omnibus Rule Compliance. Business Associate shall:

- (i) not receive, directly or indirectly, any impermissible remuneration in exchange for PHI or Electronic Protected Health Information, except as permitted by 45 C.F.R. Sections 164.506(a) and 164.508(a)(4);
- (ii) comply with the marketing and other restrictions applicable to business associates contained in 45 C.F.R. Sections 164.506(a) and 164.508(a)(3);
- (iii) fully comply with the applicable requirements of 45 C.F.R. Section 164.502 for each use or disclosure of PHI;
- (iv) fully comply with 45 C.F.R. Sections 164.306 (security standards), 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies, procedures and documentation requirements); and
- (v) to the extent required under HHS regulations or other guidance, comply with the additional privacy and security requirements enacted in the HIPAA Omnibus Rule that apply to business associates in the same manner and to the same extent as Covered Entity is required to do so.

4. Obligations of Covered Entity

a. Delegation to Business Associate. As set forth in Sections 3(e), 3(f), 3(g) and 3(h) of this Agreement, Covered Entity hereby delegates to Business Associate the Covered Entity's responsibility to provide access, amendment, and accounting rights to Individuals with respect to PHI in any Designated Record Set maintained by, or in the possession of, Business Associate. It is understood that Business Associate will interact with the Individual directly, up to and including resolution of any appeals or reporting of complaints under HIPAA or applicable federal or state law. Further, Covered Entity hereby delegates to Business Associate the Covered Entity's obligations with respect to notice of Breaches of Unsecured Protected Health Information. In accordance with Section 3(c) of this Agreement, Business Associate shall notify affected Individuals, Covered Entity, the Secretary, and media (if Required by Law) of such Breach within sixty (60) calendar days after discovery. Such notice shall comply with the notification requirements set forth in Subpart D of 45 C.F.R. Part 164 (45 C.F.R. Section 164.400 et seq.).

b. Responsibility for Further Disclosures. Covered Entity shall be responsible for ensuring that any further disclosure by Covered Entity of PHI (including, but not limited to, disclosures to employers, plan sponsors, agents, vendors, and group health plans) complies with the requirements of HIPAA and applicable federal and state law.

c. Applicable Law. HIPAA requires the Covered Entity and the Business Associate to comply with the Privacy Rule and applicable state privacy laws, based upon application of the preemption principles set forth in 45 C.F.R. Sections 160.201 et seq..

d. Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. Section 164.520, as well as any changes to such notice to the extent that such changes affect Business Associate's use or disclosure of PHI under this Agreement. Business Associate shall not distribute its own notice to Individuals. Business Associate shall not be responsible for the content of Covered Entity's notice of privacy practices nor any error or omission in such notice.

e. Changes in Permission by Individual. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

f. Restrictions on PHI. Covered Entity shall notify Business Associate of any restriction upon the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. Section 164.522 (as amended by HITECH), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

g. Permissible Requests by Covered Entity. Covered Entity shall not request

Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except for Business Associate's use of PHI for its proper management and administration or to carry out its legal responsibilities under Section 2 of this Agreement.

h. Disclosure to Third Parties. Covered Entity may request that Business Associate disclose PHI directly to another party. Covered Entity agrees that all such disclosures requested by Covered Entity shall be for purposes of Covered Entity's treatment, payment or health care operations or otherwise permitted or required under HIPAA or other applicable law.

5. Use of Limited Data Sets. The parties agree, for purposes of complying with 45 C.F.R. Section 164.502(b)(1), to limit, to the extent practicable, any use, disclosure and requests of PHI to a "limited data set" (as defined in 45 C.F.R. Section 164.514(e)(2)) or, if needed by the Business Associate or Covered Entity, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request. This Section will cease to apply on the effective date of regulations issued by the Secretary in accordance with HITECH Section 13405(b)(2)(C). The parties shall comply with any such regulations promulgated by the Secretary as of their effective date.

6. Compliance Audits. Covered Entity shall have the right to audit Business Associate's compliance with this Agreement. Upon request, Business Associate shall provide Covered Entity representatives reasonable access to Business Associate's relevant records and other information during normal business hours at Business Associate's place of business. Any such audits shall be conducted in accordance with the terms and conditions (if any) for Plan Sponsor audits set forth in the Services Agreement.

7. Indemnification. Business Associate agrees to indemnify, defend and Covered Entity harmless from any and all liability, damages, costs (including reasonable attorneys' fees and costs) and expenses imposed upon or asserted against the Covered Entity arising out of any claims, demands, awards, settlements or judgments relating to Business Associate's, or, as applicable, its director's, officer's, employee's, contractor's, business associate's, trading partner's, and/or client employer's use or disclosure of PHI contrary to the provisions of this Agreement or applicable law.

8. Term and Termination.

a. Term. The term of this Agreement shall commence as of the Agreement Effective Date, and shall terminate when the Services Agreement terminates or as otherwise provided herein. Upon termination, all of the PHI provided by either party to the other, or created or received by Business Associate on behalf of Covered Entity, shall be handled as provided in Section 8(c).

b. Termination for Cause. If either party breaches a material term of this Agreement, the non-breaching party shall provide a written notice of the breach and a reasonable opportunity to the other party to cure the breach or end the violation within a reasonable period of time specified in the notice. If the breach cannot be cured or is not cured within a reasonable period, this Agreement may be terminated immediately by the non-breaching party.

c. Effect of Termination.

(i) Except as provided in paragraph (ii) of this Section 8(c), upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of Subcontractors or Agents of Business Associate.

(ii) The parties recognize that Business Associate and Business Associate's Subcontractors and Agents may be required to retain PHI to fulfill certain contractual or regulatory requirements, making return or destruction infeasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make

the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate's Subcontractors and Agents shall likewise be contracted to extend such protections to PHI in their possession.

(iii) In no event shall this Section 8 affect any obligation of Business Associate to transfer Covered Entity's information and data to any successor services provider retained by Covered Entity or its successor under the Services Agreement or otherwise.

9. References. A reference in this Agreement to HIPAA means the law or regulation as in effect on the Agreement Effective Date or as subsequently amended, and for which compliance is required on the date of determination.

10. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is required for the parties to comply with the requirements of HIPAA. The parties agree to negotiate in good faith any modification to this Agreement that may be necessary or required to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including but not limited to, the Privacy Rules or the Security Rules or other regulations promulgated pursuant to HIPAA.

11. Waiver. No delay or omission by either party to exercise any right or remedy under this Agreement will be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.

12. Survival. The respective rights and obligations of Business Associate under Sections 6, 7 and 8 of this Agreement shall survive the termination of this Agreement and the underlying Services Agreement.

13. Severability. In the event any part or parts of this Agreement are held to be unenforceable, the remainder of this Agreement will continue in effect.

14. Parties to Agreement. The Covered Entity and Plan Administrator agree that they are parties to the Services Agreement (for purposes of complying with HIPAA only) and to the extent not so identified in the Services Agreement, the Services Agreement is hereby amended accordingly.

15. No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person, other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

16. Assignment. This Agreement is not assignable by either party without the other party's written consent.

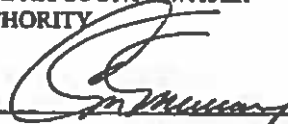
17. Effect on Services Agreement. Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with the Agreement, all other terms of the Services Agreement shall remain in force and effect and govern this Agreement. This Agreement shall supersede and replace all prior business associate agreements between the parties.

18. No Agency Relationship. For purposes of this Agreement, Business Associate is not the agent of Covered Entity (as such term is defined under common law).

19. Interpretation. The provisions of this Agreement shall prevail over any provisions in the underlying Services Agreement, or any operational activities under the Services Agreement, that conflict or are inconsistent with any provision in this Agreement. Any ambiguity in this Agreement, the Services Agreement or in operations shall be resolved in favor of a meaning that permits Covered Entity or Business Associate to comply with HIPAA or the applicable federal or state law.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

FAIRFAX COUNTY WATER
AUTHORITY

By: 
Title: General Manager

HEALTHSCOPE BENEFITS, INC.

By: 
Title: CEO

EXHIBIT F

CERTIFICATION OF PLAN DOCUMENT AMENDMENT
FAIRFAX COUNTY WATER AUTHORITY

To: HealthSCOPE Benefits, Inc.

Re: Certification of Plan Document Amendment

Plan Sponsor, as defined in that certain Administration Services Only Agreement ("Agreement") with HealthSCOPE Benefits, Inc. ("TPA"), is the sponsor of the Plan (as defined in the Agreement). Plan Sponsor performs plan administration functions for the Plan and needs access to the Plan participants' protected health information to carry out those plan administration functions.

Plan Sponsor hereby certifies that the plan document of the Plan has been amended to comply with the requirements of 45 Code of Federal Regulations Section 164.504(d)(2). In addition, Plan Sponsor hereby certifies that the Plan document provides the required assurance that Plan Sponsor will: (a) appropriately safeguard and limit the use and disclosure of the Plan participants' Protected Health Information, including Electronic Protected Health Information, (as "protected health information" and "electronic protected health information" are defined in 45 Code of Federal Regulations Section 160.103) that Plan Sponsor may receive from the Plan or TPA for TPA to perform its duties under the Agreement; (b) ensure that Plan Sponsor and the Plan are adequately separated, as required by 45 Code of Federal Regulations Section 164.504(d)(2)(iii); (c) implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Plan; and (d) report to the Plan any Security Incident (as "security incident" is defined in 45 Code of Federal Regulations Section 164.304).

Accordingly, please allow the following EMPLOYEES OR CLASSES OF EMPLOYEES access to the minimum necessary protected health information of the Plan participants for Plan Sponsor to perform the following plan administration functions.

Employee Name or Class & Administrative Function
Libby Murray, Program Supervisor Benefits/HRIS
Susan Heck, Human Resources Manager

Employee Name or Class & Administrative Function


In addition to the above employees or classes of employees, please allow the following ADDITIONAL INDIVIDUALS WITH WHOM THE PLAN HAS ENTERED INTO A BUSINESS ASSOCIATE AGREEMENT OR WHO ARE OTHERWISE ENTITLED TO HAVE ACCESS TO THE PLAN'S PROTECTED HEALTH INFORMATION IN ACCORDANCE WITH THE HIPAA PRIVACY REGULATION access to the minimum necessary protected health information of the Plan participants for Plan Sponsor to perform the following plan administration functions. Plan Sponsor understands that the following list does not represent a complete list of all of the individuals to whom the Plan participants' protected health information may be disclosed in connection with the administration of the Plan and that the participants' protected health information may be disclosed to additional individuals or entities for purposes of treatment, payment, health care operations and other permitted purposes as set forth under the HIPAA Privacy Regulation.

Individual Name & Administrative Function

Individual Name & Administrative Function

(Attach Addendum if necessary) Addendum Attached: Yes No

As the duly-authorized representative of Plan Sponsor, I hereby certify and attest to the above:


Signature
Charles M. Murray
Name Printed
General Manager
Title
08/28/2015
Date

