



SERVICE AGREEMENT
EMPLOYEE BENEFITS

Employer: **Webb County**

RECITALS

- A. The above-named employer ("Employer") desires to retain National Benefit Services, LLC ("NBS"), a Utah limited liability company, (collectively, the "Parties") to provide employee benefit services in a manner consistent with the law. As used throughout this agreement, "law" refers to the federal or state legal requirements identified in the "Schedule of Defined Terms, Services and Obligations" attached to this agreement as "Schedule A."
- B. The Parties understand and agree that the employee benefits to which this agreement applies are subject to legal requirements which identify and define the obligations undertaken by the Employer or plan in providing the benefits.
- C. The Parties further understand and agree that regardless of whether the law identifies the Employer or a plan fiduciary as responsible for the manner in which employee benefits are provided, the use of "Employer" in this agreement is intended by the Parties to identify the individual or entity held responsible under the law.

Accordingly, the Employer hereby retains NBS to provide employee benefit services according to the following terms and conditions, which together with all the schedules attached hereto, represents the entire agreement of the Parties ("Service Agreement"):

AGREEMENT

- 1. **Defined Terms.** Terms with special meaning in the Service Agreement are defined when first used and are capitalized thereafter. Certain terms specific to the services selected by the Employer are defined in Schedule A.
- 2. **Engagement and Services.** NBS agrees to provide the services described in Schedule A according to the terms and conditions of the Service Agreement, which include the Employer Obligations listed in Schedule A.
- 3. **Fees.** The costs for the selected services are itemized on a Fee Schedule applicable to such services attached hereto as "Schedule B." NBS shall not increase any item on any Fee Schedule for the first three years this Agreement is effective. At the end of ~~each calendar~~ the third year, if this Agreement is still effective, NBS has the right to increase the fees listed in Schedule B as necessary to account for inflation costs in the industry. Any automatic increase, however, shall not exceed the prior-year fees by more than four (4) percent. In no event shall an update to the amounts listed in Schedule B to implement an increase under this Section be considered a "modification" of the Service Agreement as described in Section 4. This Section 3 shall not apply to fee changes necessitated because of increases in the cost of administration (including changes in regulatory requirements) or to ensure the assessed fees are consistent with industry standards. Changes in fees which are not due to inflation costs shall be governed by Section 4 of the Service Agreement.
- 4. **Modification.** Either Party may request modification of the Service Agreement in writing. As provided in this Section 4, no modification of the Service Agreement shall be effective until approved by the Party to be bound.

- A. For material modifications to Schedule A, NBS will notify Employer in writing of the proposed changes and request Employer's signed approval. If NBS does not receive Employer's approval or written objection within thirty (30) days of receipt of written notice, NBS may:
 - i. Deem the modifications as accepted by Employer;
 - ii. Suspend performance of services under the Service Agreement until consent is given; or
 - iii. Terminate the Service Agreement.
- B. Unless NBS receives prior written objection from the Employer, the Employer's consent is deemed received thirty (30) days after receipt from NBS of any notice proposing the following:
 - i. Any modification of a Schedule B.
 - ii. Any modification of a Schedule A, which NBS, in its sole discretion, considers non-material.
- 5. **Employer's General Obligations to NBS.** The Employer acknowledges that under the law, providing plan documents or filing reports in an untimely manner or which contain errors or omissions may result in fines or penalties, including the disqualification of a qualified benefits plan (if applicable). The Employer further acknowledges that NBS may rely solely upon, and shall have no responsibility to independently verify the accuracy of, information provided by the Employer. Accordingly, the Employer shall:
 - A. Provide NBS with all information requested by NBS in good order. As used in the Service Agreement, "in good order" shall mean without limitation information which is:
 - i. Verified and warranted by Employer to be complete and accurate;
 - ii. Compliant with the document type and formatting requirements specified by NBS for the information requested; and
 - iii. Furnished to NBS in a timely manner. As used in the Service Agreement, "timely manner" shall mean received by NBS no later than the date specified in the Service Agreement or in any written notice from NBS.
 - B. Pay all amounts billed by NBS for extra hourly work at the rate stated on a Schedule B for any administrative services repeated by NBS because information was not provided by the Employer in good order.
 - C. To the extent permitted by law, hold NBS harmless for any consequences that may result from NBS's inability to complete its work, in the ordinary course of business, due to the failure of the Employer to provide information to NBS in good order.
 - D. Review all documents and reports prepared by NBS for accuracy and consistency with the Employer's own records. Employer waives the right to request corrections or return of fees if not reported to NBS within thirty (30) days of receipt of the document or report.
 - E. Ensure all government reports which NBS prepares are timely filed with the appropriate agency.
 - F. Pay any fines resulting from a failure to timely file required government reports with the appropriate agency, if failure is caused by Employer's delay in providing information to NBS in good order.
 - G. Timely provide required benefit information to relevant parties (employees, participants, beneficiaries, etc. as applicable). As used herein "required benefit information" shall include, without limitation: notices, elections, and reports required under the law.
 - H. Comply with all benefit plan provisions (where the services selected by the Employer are for a qualified plan or plans) and all relevant legal requirements.
 - I. Be responsible for payment of all amounts that may become due and owing under the Service Agreement.

Note: some or all of these Employer Responsibilities may be outsourced to NBS as outlined in the Fiduciary Services Schedule A

6. **Controlled Groups.** The Employer acknowledges that:
- A. The law includes complex rules governing business associations such as controlled groups, affiliated service groups, employee lease arrangements, and management organizations.
 - B. The rules governing business associations may impact the operation and qualified status of employee benefits and that NBS does not provide analysis nor determine the effect of these rules on such benefits.

Accordingly, the Employer warrants and agrees that:

- C. The Employer has disclosed to NBS all related businesses and associations relevant to the benefits and the administration of the benefits;
 - D. If any related businesses and/or associations exist, the Employer has obtained certification from a competent professional as to (1) whether a controlled group, affiliated service group, employee lease arrangement, and/or management organization exists with the affiliation(s) and (2) whether such group has any current issues, concerns, and/or complications;
 - E. The Employer shall notify NBS in writing prior to any relevant changes in business structure or organization. For purposes of the Service Agreement "relevant changes in business structure or organization" shall include, but is not limited to:
 - i. Any change in name or ownership of the Employer;
 - ii. Any change in the Employer's business entity type which may impact the qualified status of the benefits and the administration of such benefits; and
 - iii. Any change which results from merger or acquisition involving the Employer.
 - F. Upon request, the Employer shall certify in writing, that the warranties provided in this Section 4 remain accurate and current.
7. **Form of Notice.** Notice of termination of the Service Agreement shall be in the manner prescribed in section 23. All other notices required or identified herein shall be in writing and conveyed to the other Party in the manner best-calculated to provide the recipient with actual notice. If notice is conveyed by email, sender shall require proof of receipt. Notice will at a minimum convey what action is required to be taken by the Party receiving the notice and will specify a clear deadline for compliance.
8. **Format of Documents.** All documents to be provided pursuant to the Service Agreement, unless otherwise provided herein, shall be provided electronically. For purposes of the Service Agreement, documents provided in a secure format will be considered "received" when both the document and the means to access the document have been received by the intended Party.
9. **Time is of the Essence/Force Majeure.**
- A. For all the services selected by the Employer and provided by NBS, time is of the essence. Deadlines applicable to the services provided hereunder shall be identified in Schedule A or by specific notices provided to the Employer. Except as specifically provided in Section 9.B., failure by the Employer to comply with the timing provisions specifically identified in the Service Agreement or through notices by NBS shall constitute a breach of the Service Agreement.
 - B. Neither Party shall be held responsible for the delay or failure to perform services and/or obligations under the Service Agreement when such delay or failure is due to fire, flood, epidemic, strike, an act of God or any public enemy, unusually severe weather, failure or malfunction of any electronic, electric or mechanical equipment, legislative or regulatory acts of any public authority, delays or defaults caused by public carriers, or other circumstances which cannot reasonably be forecasted or provided against.

10. **Ministerial Services Only.**

- A. Unless this agreement includes a Fiduciary Services Schedule A, the Parties acknowledge and agree that NBS will NOT act as a "Plan Administrator" or "Fiduciary" to a Plan as defined in ERISA § 3. The Parties further acknowledge that the Service Agreement does not grant NBS any discretionary authority or control regarding management or administration of the benefits and that the services provided by NBS shall not be construed by the Parties as management or disposition of benefit plan assets.
- B. The Parties acknowledge and agree that NBS will not provide investment advisory services, and that the services provided hereunder will not be interpreted as investment advice as that term is used in ERISA § 3(21)(A).
- C. The Parties also acknowledge and agree that NBS will not provide accounting services outside of the record-keeping services required for benefit administration as listed in Schedule A. Furthermore, NBS will have no liability for the accuracy or completeness of any of the books or records regarding the administration of the benefits for any period preceding the signed date of the Service Agreement.
- D. Although NBS employs licensed in-house attorneys to discharge its obligations under the Service Agreement, NBS will not provide legal services or legal advice to the Employer. Accordingly, the Employer will be responsible to have all documents and forms completed by NBS reviewed by competent legal counsel to ensure that they are appropriate for and meet the specific requirements of the benefits selected by the Employer. The Employer agrees to consult with an attorney experienced in employee benefit matters regarding any questions or concerns that the Employer may have relative to benefit plan qualification, coverage of employees, and any other issues of a legal nature.

11. **Nonexclusive Services.** The Parties acknowledge and agree that NBS will be performing similar services and other types of work for other employers. Nothing contained in the Service Agreement shall grant to either Party any right, title, or interest in or to the business activities or opportunities of the other Party—or the power or authority to contract on behalf of the other Party—other than as specifically provided in the Service Agreement.

12. **Legal Compliance.** Each of the Parties hereto agrees to comply with all applicable federal, state, and local laws, rules and regulations in the performance of their respective responsibilities under the Service Agreement, including any mandated confidentiality requirements.

13. **Cooperation from NBS.** Upon the Employer's request, NBS will promptly provide all benefit information necessary for an audit or investigation to the specified entity and in the manner requested. Without limiting the foregoing, "audit or investigation" includes any investigation by the Department of Labor and audits conducted by the Internal Revenue Service, the Employer, or by a third party firm designated by the Employer. The first three hours of audit support is included in the Audit Coordination fee, additional support shall be billed at the rate for extra hourly work.

GENERAL CONDITIONS

14. **Billing Procedures and Collections.** Consideration for providing the services listed in Schedule A shall be by payment of the fees identified in Schedule B. Fees for services rendered are payable by the Employer, or other party as agreed upon in Schedule B, upon receipt of an accurately invoiced statement for services. Acceptance by NBS of any payment by a third party shall not constitute a waiver of any rights NBS may have under the Service Agreement or by law to collect from the Employer amounts due and owing to NBS for services provided. If NBS does not receive payment in full within thirty (30) days of the statement date, the Employer's account shall be subject to a FINANCE CHARGE of 1.5% per month (18% APR). If the Employer's state of domicile requires a lesser rate, the Employer's past-due balance shall be subject to a FINANCE CHARGE at the highest allowable rate. If NBS does not receive payment in full within sixty (60) days of the statement date, NBS may terminate the Service Agreement immediately and pursue collection actions. Employer understands and agrees that it is responsible for all unpaid participant fees. This Section 14 does not apply to Claim Reserve funding

for welfare benefit plans. For the Employer's obligations related to billing and remittance of Claim Reserve funds for welfare benefit plans, see the applicable welfare benefit Schedule A.

Should NBS employ an attorney to assist in the collection of past due fees, the Employer shall pay all resulting collection costs and attorney fees whether or not litigation commences.

15. **Compliance/Breach.** If the Employer fails to perform any of the terms and conditions of the Service Agreement, the Employer shall be deemed in material breach of the Service Agreement, and NBS shall have the right to cease to provide any further services for the Employer and terminate the Service Agreement. If the breach arises for reasons other than non-payment of fees, NBS may notify the Employer in writing of the breach and instruct how and by when the Employer must cure the breach. Such notice may include, as necessary, the amount of any additional charges the Employer must pay to enable NBS to meet applicable federal deadlines. If the Employer does not cure the breach within the timeframe stated in the notice, NBS may terminate the Service Agreement without waiving NBS's right to receive payment for services rendered and costs incurred, or to exercise any other remedies available at law or equity.

If NBS fails to perform any material terms and conditions contained in the Service Agreement, NBS shall be deemed in breach of the Service Agreement, and the Employer may terminate the Service Agreement or suspend payments under the Service Agreement to NBS until such breach is cured. If the Employer chooses to suspend payments, the Employer shall submit a written notice to NBS stating that it considers NBS in breach and has suspended payment. If NBS does not cure the breach within fifteen (15) days of receiving the notice, either party may terminate the Service Agreement.

16. **Jurisdiction and Venue.** The Service Agreement shall be construed, administered and enforced in accordance with the laws of the State of Texas. Additionally, the Parties submit to the exclusive jurisdiction of and venue in the appropriate Texas state or federal courts located in Webb County, Texas.
17. **Damages.** A Party's liability to the other arising out of or relating to the Service Agreement—including liability for any claim for indemnification—will not exceed the lesser of the total fees payable to NBS for services for the current or most recent contract year or \$50,000. In no event will either Party be liable to the other for any consequential, indirect, special, incidental, or punitive damages—regardless of the form of action—whether in agreement, tort, strict liability or otherwise, even if advised of the possibility of such damages and even if the damages were foreseeable. The limitations in this section do not apply to any amounts owing under the terms of the Service Agreement, any claims for attorney fees, or other litigation costs either Party is entitled to recover.
18. **Indemnification.** NBS and the Employer agree to assist each other to resolve matters in dispute or potential liability to the Parties through open, amicable, and timely communication.

To the extent permitted by law, the Employer hereby agrees to indemnify, defend, and hold harmless NBS and its members, officers, agents, and employees from and against any and all claims, damages, judgments, liabilities, attorney and professional fees, court costs, and litigation costs caused by, arising out of, or relating to (1) any act or omission by the Employer or its agent which occurred prior to the effective date of the Service Agreement; (2) any information provided, or instructions given, by the Employer or its agent to NBS pursuant to the Service Agreement; (3) the Employer's failure to disclose any controlled-group issues or to obtain the controlled-group certification required under the Service Agreement; (4) the Employer's material breach of the Service Agreement; or (5) any claim by any third-party against NBS arising from the Employer's failure to perform or comply with the terms and obligations of any qualified benefit plan, applicable statutes, and regulations governing benefit plans or the Employer's gross negligence or willful act or omission. The Employer will not indemnify against any liability resulting from gross negligence, willful misconduct, actual fraud, or criminal conduct of NBS.

To the extent permitted by law, NBS hereby agrees to indemnify, defend and hold harmless the Employer and its members, officers, agents, and employees from and against any and all claims, damages, judgments, liabilities, attorney and professional fees, court costs, and litigation costs caused by, arising out of, or relating to (1) NBS's material breach of the Service Agreement or (2) any claim

by a third party against the Employer arising from the gross negligence or willful act or omission by NBS. NBS will not indemnify against any liability resulting from gross negligence, willful misconduct, actual fraud, or criminal conduct of the Employer.

Within thirty (30) days receipt of any such litigation or demand, NBS and the Employer agree to give one another prompt written notice of any claim threatened or instituted against the other which might constitute the basis for a claim of indemnity by either Party against the other. If either Party does not notify the other within the said thirty (30) days, this indemnification is null and void against the Party who fails to make such notification. Any successful indemnification claim is limited in damages as described in section 17.

19. **Integration and Severability.** The Service Agreement, together with all attachments hereto, including all schedules and exhibits, represents the entire agreement of the Parties and supersedes any prior agreement as to the subject matter contained herein. In the event that any provision or portion of the Service Agreement is declared void or unenforceable in a court of law, the remaining provisions of the Service Agreement shall remain binding upon the Parties as if the void or unenforceable provision had not been originally included.
20. **Consent to Breach or Waiver.** Any consent to breach or waiver of any provision of the Service Agreement shall be in writing. Such writing shall establish the scope and terms of the waiver or consent and shall be signed by the Party waiving its right. In no event shall a Party's failure to enforce any provision of the Service Agreement be deemed a consent to breach or a waiver of any provision of the Service Agreement; nor shall any written consent to breach or a waiver of any provision of the Service Agreement be deemed to extend beyond its express terms.
21. **Headings.** Section headings in the Service Agreement are for the purpose of convenience only and are not intended to affect the meaning or interpretation of the Service Agreement.
22. **Multiple Counterparts.** The Service Agreement may be signed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same agreement.
23. **Termination of Service Agreement.** The Service Agreement may be terminated by either Party on thirty (30) days written notice or on such shorter time as the Parties may agree in writing. Early termination by the Employer, unless agreed upon in writing, shall result in an early termination fee. The early termination fee shall be the greater of the amount of the most recent invoice or \$500.00. Notice shall be deemed effective as of the date the written notice of termination is deposited in the United States Mail or on such date that the Party giving notice of termination delivers the notice electronically (for example, by e-mail) using such means as the Parties have used to communicate in writing during the period that the Service Agreement has been in effect.

Unless the Parties otherwise agree in writing to specific delivery conditions, upon termination of the Service Agreement, NBS shall provide to the Employer, within a reasonable time following termination, all benefit information which NBS considers necessary to enable the Employer to continue operation of the benefit. Such information shall be provided in an electronic format at the address contained in NBS's records at the time of termination of the Service Agreement. Any information classified as Protected Health Information ("PHI") under HIPAA shall be provided, if at all, only as permitted under HIPAA. NBS shall be entitled to full payment of all fees for services rendered for the Employer, including services provided subsequent to the date of termination of the Service Agreement as requested by the Employer, and for copy charges associated with any requests for benefit records or documents.

The Parties acknowledge that upon termination, any continued reliance by the Employer, or any of the Employer's agents or representatives, on any benefit forms, documents and/or records, including any plan document, created and provided by NBS are at the Employer's complete and sole risk. NBS shall not be held liable in any way for such reliance.

24. **Record Access and Maintenance.** Subject to all applicable benefit and privacy requirements, records maintained by NBS, which are reasonably necessary to the performance of the services, may be examined by the Employer, governmental regulatory agencies, or any other person lawfully entitled to access them. NBS shall maintain these records until they are provided to the Employer.

IN WITNESS HEREOF, the Parties have executed the Service Agreement for the following benefit services:

- FSA Benefit

effective as of the date of execution by the Employer below.

Webb County

Signed: _____
(Its Authorized Agent)

Title: _____

Date: _____

NATIONAL BENEFIT SERVICES, LLC

Signed: Paul R Lovell
(Its Authorized Agent)

Title: CEO

Date: November 19, 2021 ~~November 18, 2021~~

SCHEDULE A

SCHEDULE A – DEFINED TERMS, SERVICES AND OBLIGATIONS

FLEXIBLE BENEFIT PLANS

I. APPLICABLE LAW AND DEFINED TERMS

A. Applicable Law

1. As used in this Service Agreement, “the law” means the relevant provisions of the Internal Revenue Code (“the Code”) the Employee Retirement Income Security Act (“ERISA”) and relevant final and proposed regulations adopted under the Code and ERISA.

B. Defined Terms

1. As used in the Service Agreement, the following terms are as defined:
 - a. “Employees” means those employees of the Employer meeting the definition of “employees” under the Code. Self-employed individuals (including partners in a partnership and sole proprietors) and more-than-2% shareholders in a subchapter S corporation are not “Employees” as used in this agreement.
 - b. “Employer” means the entity identified as the Employer in Recital A of the Service Agreement document. While the operation of the Plan is carried out under distinct, federally defined fiduciary roles which include “plan sponsor,” “plan administrator,” and in some instances “designated plan fiduciary,” “Employer” as used in the Service Agreement shall mean whichever fiduciary is designated by the Plan to fulfill those responsibilities. Unless another individual or entity is named in the Plan Document as the Administrator or the Plan Sponsor, the Employer is considered under ERISA as the Administrator and the Plan Sponsor.
 - c. “FSA” means the health flexible spending arrangement (if applicable) included as a benefit in the Plan.
 - d. “DCAP” means the dependent care assistance program (if applicable) included as a benefit in the Plan.
 - e. “HSA” means health savings account contributions (if applicable) included as a service under the Plan.
 - f. “LFSA” means the limited flexible spending arrangement (if applicable) included as a benefit in the Plan.
 - g. “Plan” means the particular Cafeteria Plan which is sponsored by the Employer for the benefit of its Employees and which meets the requirements of § 125(d)(1) of the Code.
 - h. “Plan Document” means the written instrument within the meaning of §125(d)(1) of the Code which contains all of the operating rules adopted by the Employer as prescribed in Code § 125 and the regulations thereunder.
 - i. “POP” means a Plan which offers premium payments for the Employer-sponsored major medical coverage as its only benefit.

II. NBS SERVICES

NBS shall provide services as described in this Service Agreement on behalf of the Plan and as agreed upon herein by the Parties. NBS shall provide the services described herein in a professional, workmanlike manner. NBS, as a Third Party Administrator, shall be obligated to perform only those services specifically enumerated in this Service Agreement. NBS reserves the right to perform other services, which in its sole discretion it believes are necessary to the efficient, professional, and workmanlike execution of its obligations hereunder; however, performance of any services not enumerated herein shall not create an ongoing obligation to perform such services. In no event shall NBS be deemed to have breached its obligations to the Plan because of a failure to perform a function not enumerated herein and agreed-upon by the Parties.

SCHEDULE A

A. Plan Setup and Document Services

NBS shall:

1. *Prepare Plan Document.* NBS shall prepare the Plan Document according to instructions received from the Employer on a form provided by NBS. The Plan Document contains the formal description of the benefits provided under the Plan, including but not limited to:
 - who may participate ("Participant")
 - what expenses may be reimbursed
 - contribution amounts
 - the starting date of the plan year
 - non-discrimination rules (required by federal law)
2. *Prepare and maintain summary plan description ("SPD") (as necessary).* NBS will prepare and provide to the Employer an SPD to furnish to each Participant in accordance with ERISA. The SPD includes a description of the Plan which is consistent with the terms of the Plan Document, and instructions and rules of the Plan in a format designed to be of assistance to Participants.
3. *Prepare Amendments to the Plan Document.* NBS will prepare amendments to the Plan Document requested by Employer, or required by changes to federal law. A Summary of Material Modification (SMM) or an updated SPD will be provided to Employer for distribution to Participants.
4. *Prepare Enrollment Materials.* NBS will prepare easy-to-understand enrollment materials for Participants, including enrollment forms, claim forms, website instructions, debit card instructions and HIPAA Notices. All materials, forms, and instructions will be provided in electronic format only.

B. NBS Administration Services

1. *Provide Information and Customer Support.* NBS will serve as a nondiscretionary information resource to the Plan and Participants as follows:
 - a. Upon execution of the Service Agreement an account representative will be assigned to the Plan to assist the Employer with specific questions regarding the Plan as well as general questions regarding the benefits selected by the Employer. Direct email and telephone contact information for the assigned account representative will be provided to the Employer during Plan setup.
 - b. The assigned account representative will generally be available Monday through Friday, 8:00 a.m. to 5:00 p.m. Mountain Time.
 - c. General benefits information is available online at www.nbsbenefits.com
 - d. Participants may contact NBS at (801) 532-4000 (Salt Lake City area) and (855) 399-3035, Monday through Friday, 7:00 a.m. to 6:00 p.m., Mountain Time and via email at 125claims@nbsbenefits.com
2. *Process and maintain Participant Enrollment Information.* NBS prefers to receive enrollment information either in a secure electronic data file format as specified by NBS or through online enrollment. Enrollment information provided to NBS in other formats, including, but not limited to, hard copy (paper) or an unapproved electronic data file format not previously specified by NBS may incur additional processing fees per the hourly rate as specified on Schedule B of the Service Agreement. NBS will process enrollment information within five (5) business days from when it is received from the Employer in electronic (secure data files as specified by NBS or online enrollment) files. Processing time may increase beyond five (5) business days when the Employer provides enrollment information to NBS in other formats, including, but not limited to, hard copy (paper) or an unapproved electronic file format not previously specified by NBS. Once received, information is maintained in a secure environment. Information that must be collected includes Participant name, Participant identifying number, date of birth, date of hire, election amounts (FSA, LFSA and DCAP), effective date, banking information (if direct deposit of claim

SCHEDULE A

reimbursements has been elected by the Participant), email address to send confirmation of claim payment, physical mailing address (for HSA benefit Participants this cannot include a P.O. box), debit card election for Participants, and relevant dependent information.

3. *Receive contribution detail reports from Employer in an NBS-approved system-readable electronic format.* NBS will provide the Employer with contribution detail report requirements specific to the Plan during plan setup. NBS will specify when the contribution detail reports are required from the Employer (which will be on a consistent, regularly-recurring basis), as well as the approved electronic format of the reports.
4. *Receive and Process Payments from Employer General Funds.* NBS shall establish a claim reserve in the name of the Employer which consists of payments received from Employer ("Claim Reserve"), held in a custodial account for the benefit of the Employer, as described more fully in Section III.B below. As required under the Plan Document and consistent with relief described in Department of Labor ("DOL") Technical Releases 88-1 and 92-01, NBS shall consider the Claim Reserve as an Employer general asset and not as an asset of the Plan regardless of whether the Plan is subject to ERISA.

NBS will notify Employer at any time participant claims exceed the amount of funds in the Claim Reserve. By executing this Service Agreement, Employer authorizes NBS to retain any amounts remaining in the Claim Reserve at the end of the plan year in anticipation of increased claim activity which typically occurs at the beginning of the subsequent plan year.

5. *Adjudicate and process claims under the FSA.* Generally, NBS adjudicates FSA claims in the manner prescribed in the Plan Document and according to requirements of Code Section 213(d) and the rulings and Treasury regulations thereunder. The procedures used by NBS are more fully described in Appendix 2 to this Schedule. In the event that a claim is received by NBS which does not clearly meet the requirements for an eligible medical expense under the Plan Document, the Code, and Treasury rulings and regulations, NBS will deny the claim. Employer may consult with NBS regarding whether the claim should be approved. All final determinations as to a Participant's entitlement to benefits under the Plan are to be made by the Employer, including any determination upon appeal of a denied claim for benefits under the Plan. Without limiting the foregoing, once an FSA claim is submitted to NBS for reimbursement, NBS will
 - a. Verify Plan limits or election limits are not exceeded
 - b. Confirm the expense is a qualifying expense for medical care under Internal Revenue Code § 213 and the plan document
 - c. Obtain the Participant's signed certification stating that, among other things, the expense was qualified (for debit card transactions and electronically-submitted claims use of the card or electronic submission satisfies this certification requirement)
 - d. Confirm receipt of a written statement from an independent third party evidencing the date, nature, and amount of the expense, unless the expense meets the requirements of IRS proposed regulation §1.125-6(e) or §1.125-6(f) for automatic or real-time claims substantiation. For LFSAs, substantiation from an independent third party is also required to establish that the Participant has met the deductible requirements or is for limited-purpose-eligible expenses
6. *Calculate DCAP claim payment (if applicable).* Once a DCAP claim is submitted to NBS for reimbursement NBS will:
 - a. Verify the amount of reimbursement is no more than the maximum amount contributed by the participant as of the date of the reimbursement request and does not exceed the limits imposed by the Plan and Code
 - b. Verify the expense was incurred during the coverage period
 - c. Obtain the Participant's signed certification stating that, among other things, the expense meets the requirements of §21(b) of the Code

SCHEDULE A

- d. Confirm receipt of a written statement from an independent third party evidencing the date, nature, and amount of the expense
7. *Review debit card transactions.* NBS reviews debit card transactions which do not qualify for automatic or real-time substantiation under the requirements of IRS proposed regulation §1.125-6(e) or §1.125-6(f). NBS utilizes written statements from an independent third-party submitted in hard-copy or electronic form indicating that medical expenses have been incurred and the amount of the expenses to substantiate these transactions. NBS also ensures that Participants have provided a statement indicating that any expense for which reimbursement is sought under the Plan will not be reimbursed or is not reimbursable under any other health plan.
8. *Issue reimbursement checks or direct deposit for Participants in the FSA, and DCAP (if applicable).* NBS reviews, adjudicates, processes and pays each FSA and DCAP claim received as soon as possible after receipt and approval. Typical *claim processing* time for NBS is approximately two (2) business days from time of claim receipt. Claims are paid directly to the Participant in the form of a check unless the Participant has provided NBS with ACH transfer instructions during enrollment or thereafter using NBS's website, in which case the claim is sent directly to the Participant's bank account. Additionally, claims may be paid directly to the provider of the services at the Participant's request through the NBS website. Time for mail and bank processing is in addition to the two (2) business days for claims processing (the timeframes used in this section are for reference purposes only, and do not constitute a guarantee of delivery by a particular date. NBS will not be liable for processing and delivery times which exceed the estimate contained in this section).
9. *Discontinue claims processing and terminate participation upon receipt of notice from the Employer of loss of Participant eligibility.* Within five (5) business days of receipt of notice from the Employer that a Participant is no longer eligible to participate in the Plan, NBS will suspend processing claims for reimbursement for services rendered after the effective date of ineligibility. Any claims for reimbursement for services which were rendered prior to the date of ineligibility will still be processed unless the claim amount exceeds the remaining election balance for the Participant for the current plan year.

C. NBS Compliance and Record-keeping Services

1. *Prepare Participant benefit statements and summaries for Participant website.* NBS provides a website which allows Participants and the Employer to view balances, reports, funding information, forms and more. This website is available 24 hours a day unless maintenance to the site is being performed. NBS will not be liable for the unavailability of the website due to scheduled or unscheduled maintenance.
2. *Provide access to Plan operational reports to the Employer.* NBS provides access to reports to facilitate operation of the Plan through its website which are available to the Employer through the NBS website. These reports provide details on funding, the amount of claims paid and terminated employees.
3. *Comply with FSA COBRA Rules.* Upon receipt of notice from the Employer that a terminated Participant has elected and otherwise qualifies to continue participation of Plan benefits under COBRA, NBS will process any claims pending for that Participant, unless the claim amount exceeds the remaining election balance for that plan year.
4. *Prepare annual IRC compliance testing for the Plan and component benefits.* NBS performs comprehensive nondiscrimination testing for the Plan and component benefits. The guidelines NBS follows for testing are found in Code Sections 105, 125, 129 and 410, as well as the proposed 125 regulations and final regulations under Code Sections 105 and 410. Where official guidance from the Treasury Department regarding how the tests must be performed is absent or unclear, NBS generally follows the most conservative interpretation of relevant official and unofficial Treasury guidance. The testing procedures employed by NBS are set forth in more detail in Appendix 1 to this Schedule A. In the event that the Plan or a component benefit offered under the Plan fails testing, NBS will consult with the Employer regarding the results. Any corrections for failed tests shall be applied according to the terms of the Plan Document. NBS's

SCHEDULE A

testing services also include testing of projected benefits. If the Plan fails testing based upon projected data, NBS will consult with the Employer regarding how the Employer wishes to prevent failure of the final tests. The Employer is fully responsible for the correction of any test failures reported to Employer by NBS.

NBS performs the following nondiscrimination tests:

§ 125 Cafeteria Plan Tests (includes all benefits offered under the Plan):

- a. **Eligibility Test:** NBS tests the Plan to ensure that it does not discriminate in favor of highly compensated individuals as to eligibility to participate as required under § 125(b)(1)(A) of the Code.
- b. **Contributions and Benefits Test:** NBS tests the Plan to determine whether the contributions by the Employer to the Plan, or the benefits provided through the Plan do not discriminate in favor of highly compensated Participants as required under § 125(b)(1)(B) of the Code.
- c. **Key Employee Concentration Test:** NBS tests the Plan to verify that the value of qualified benefits provided to key Employees is less than 25% of the total value of all such benefits provided for all Employees under the Plan as required under § 125(b)(2) of the Code.

FSA:

- a. **Eligibility Test:** NBS utilizes the three alternative tests identified in § 105(h)(3)(A) of the Code to ensure that the Health FSA benefit does not discriminate in favor of highly compensated individuals as to eligibility to participate as required under § 105(h)(2)(A).
- b. **Benefits Test:** NBS tests the Health FSA to ensure that the same benefit provided to Participants who are highly compensated individuals is provided to all other Participants as required under Code §§ 105(h)(2)(B) and 105(h)(4).

DCAP:

- a. **Eligibility Test:** NBS tests the DCAP benefit to ensure that it does not discriminate in favor of highly compensated Employees or their dependents in terms of eligibility as required under § 129(d)(3) of the Code.
- b. **Contributions and Benefits Test:** NBS tests the DCAP benefit to ensure that contributions and benefits that are available to eligible Employees under the DCAP do not discriminate in favor highly compensated Employees or their dependents as required under § 129(d)(2) of the Code.
- c. **More-Than 5% Owners Concentration Test:** NBS tests the DCAP benefit to ensure that no more than 25% of the total amount paid for dependent care assistance during the year is provided to more than 5% shareholders or owners or their spouses or dependents as required under § 129(d)(4) of the Code.
- d. **55% Average Benefits Test:** NBS tests the DCAP benefit to ensure that the average DCAP benefits provided to Employees who are not highly compensated Employees is at least 55% of the average benefits provided to highly compensated Employees as required under § 129(d)(8) of the Code.

POP:

- a. **Eligibility Test:** NBS tests the POP to ensure that it does not discriminate in favor of highly compensated individuals as to eligibility to participate as required under § 125(b)(1)(A) of the Code. (Under a special IRS "safe harbor," a plan that offers health premium payments as its exclusive benefit is treated as nondiscriminatory if it satisfies the eligibility requirements of IRC § 125(b)(1)(A)).
5. **Prepare IRS Form 5500 (upon request for additional fee).** NBS will prepare IRS Form 5500 for the Plan, including applicable schedules.
6. **Assist Employer with Form 5500 Execution and E-filing (if applicable).** The law requires that the 5500 be filed electronically. NBS will assist the Employer with e-signing and will e-file the 5500 when complete.

SCHEDULE A

D. Requested Services Not Specified in Schedule A

1. *Extra Hourly Work.* NBS will charge an additional amount on an hourly basis for services not specified in this Schedule. The hourly rate is specified on Schedule B of the Service Agreement.

III. EMPLOYER OBLIGATIONS

Prior to commencement of Services by NBS, Employer shall complete and return to NBS the fully-executed Service Agreement. NBS shall not perform any services for the Plan prior to receipt of the signed Service Agreement.

The following Obligations are those which are specifically related to the Services performed by NBS for the Plan under the Agreement. These Obligations are intended to supplement and not supersede the general obligations contained in the Service Agreement. Performance of all Employer obligations is governed by Section 5 of the Service Agreement.

A. Obligations Related to Plan Setup and Document Services.

1. *Authorize Plan Setup and Plan Document Creation.* Prior to commencement of Services by NBS, Employer shall complete and return to NBS the document authorization form, which will be the sole basis for setting up the Plan and creating the plan documents. NBS specifically disclaims responsibility for Plan or document errors caused by the provision of inaccurate or incomplete information.
2. *Provide Necessary Plan Data.* Employer shall provide NBS with Participant data, which includes Participant name, Participant identifying number, date of birth, date of hire, election amounts (FSA, LFSA and DCAP), effective date, banking information (if direct deposit of claim reimbursements has been elected by the Participant), email address to send confirmation of claim payment, physical mailing address (for HSA benefit Participants this cannot include a P.O. box), debit card election for Participants, and relevant dependent information. For existing Plans, additional information which must be provided includes year-to-date deposits, claims, and Participant terminations. NBS prefers to receive Participant data either in a secure electronic data file format as specified by NBS or through online enrollment. Participant data provided to NBS in other formats, including, but not limited to, hard copy (paper) or an unapproved electronic data file format not previously specified by NBS may incur additional plan setup, document service, or processing fees per the hourly rate as specified on Schedule B of the Service Agreement.
3. *Notify NBS of Plan Changes.* The Employer must notify NBS of Plan changes (Participant or benefit changes) prior to the effective date of the change. For changes which require document amendment, written notice shall be provided not less than thirty (30) days prior to the start of the plan year or effective date of the amendment. For Participant information changes (including addition of a new Participant or modification of the information for an existing Participant), notice must be received by NBS not less than fifteen (15) days prior to implementation. NBS will include in its calculation of per-participant billing for a given month any Participants who are listed as active as of the first day of the month billed, including Participants have not been reported to NBS as terminated at least ten (10) days prior to the end of the prior month. As used in this subsection, "active Participants" shall mean any Participant identified in the NBS administration system as being eligible to receive Plan benefits on any day of the month billed, including, but not limited to, individuals with positive account balances during the Plan's claim run-out period or, where applicable, during any roll-over period, regardless of whether the Participant has elected to receive benefits for the current plan year.
4. *Distribute SPD (where applicable) and Other Plan-Related documents to Participants.* Provide the SPD prepared by NBS according to the requirements of federal law. Initially a Participant must receive the SPD not later than ninety (90) days after he or she becomes covered by the Plan. Updated SPDs must also be provided every 5 years (if the Plan has changed), every 10 years, and upon request. When the Plan is amended, Employer must provide the SMM or updated SPD (prepared by NBS) to Participants.

SCHEDULE A

B. Obligations Related to Plan Administration

1. *Promptly Deliver to NBS Completed Enrollment Materials.* The Employer will ensure delivery of benefit information and Participant information to NBS in good order (as defined in subsection 5.A. of the Service Agreement) not less than fifteen (15) days prior to performance of the Services. For takeover plans, notwithstanding any assistance which NBS may provide with facilitating the transfer of information, the Employer is responsible to coordinate with current services provider to ensure that information is timely received and in a format deemed acceptable by NBS. Information that must be provided includes Participant name, Participant identifying number, date of birth, date of hire, election amounts (FSA, LFSA and DCAP), effective date, banking information (if direct deposit of claim reimbursements has been elected by the Participant), email address to send confirmation of claim payment, physical mailing address (for HSA benefit Participants this cannot include a P.O. box) completed debit card election for Participants, and relevant dependent information. Benefit or Participant information provided to NBS not in good order may incur additional processing fees per the hourly rate as specified on Schedule B of the Service Agreement.
2. *Provide contribution detail reports to NBS in an NBS-approved system-readable electronic format.* The Employer will provide NBS with contribution detail reports pursuant to the requirements provided to the Plan by NBS during plan setup. Reports will be provided on a consistent, regularly-recurring basis in the approved electronic format specified by NBS.
3. *Maintain a Positive Claim Reserve Balance.* Upon initial Plan setup and on a regular basis thereafter, Employer shall remit maintenance payments to NBS via Check or Electronic Funds Transfer (EFT). Such maintenance payments shall constitute the Claim Reserve, and shall be remitted per an agreed-upon schedule (which may be more frequent than the regular payroll cycle), and as further agreed as to the payment method and amount. NBS will notify Employer when Participant claims exceed the Claim Reserve balance. If Employer fails to make any requested maintenance payment upon notice from NBS, NBS may suspend claims services for the Plan until requested funding is received. Compliance with this Subsection III.B.3. shall be a material term of the Service Agreement.

By entering into this Agreement, Employer authorizes NBS to deposit Employer's claim deposit funds into a custodial account at a federally insured bank on behalf of the Employer. Employer hereby authorizes NBS to use such funds only as specified in this Agreement and to retain the interest (if any) generated on amounts in the Claim Reserve as additional fees. The amount of such interest will vary according to market fluctuations outside of NBS's control, but any gain or loss will be absorbed by NBS. Upon termination of the Agreement and payment by Employer of any outstanding expenses to NBS, any remaining balance will be remitted to Employer, or handled according to Employer's express written instruction.

4. *Claims Processing and Debit Card Services.*
 - a. Make final determinations as to a Participant's entitlement to benefits under the Plan, including any determination upon appeal of a denied claim for benefits under the Plan.
 - b. Ensure the Plan does not discriminate in any way regarding availability of reimbursements under the Plan. The Plan violates this provision if it refuses to approve qualified expenses for some Employees while approving the same expenses for other Employees.
 - c. Assist NBS in informing Participants to acquire, retain, and promptly provide to NBS sufficient documentation, including explanations of benefits, invoices, and receipts where appropriate, for any expenses paid or reimbursed under the Plan. The Employer will assist in submitting such documentation to NBS upon NBS request. Such documentation must demonstrate, at a minimum, (1) a complete description of the service or product provided; (2) the date of service or sale; (3) the amount of the claim, and (for DCAP reimbursements only) the tax identification number of the day care provider.
 - d. With NBS's assistance, assume primary responsibility for correcting account deficits occurring due to improper payment or reimbursement. These efforts shall include, as necessary, the

SCHEDULE A

following: (1) requiring the employee to pay back to the Plan an amount equal to the improper payment; (2) withholding from employee's wages or other compensation an amount equal to the improper payment, or any outstanding portion thereof; (3) utilizing a claims substitution or offset approach. The Employer must exhaust the foregoing correction methods before treating the improper payment as business indebtedness in accordance with Prop. Treasury Reg. §1.125-6(d)(7)(v). The Employer should report the amount of any indebtedness forgiven by the Employer to the employee as wages on a Form W-2 for the year in which the debt was forgiven.

- e. Where violations of the terms of the card agreement have occurred, other actions may be required to ensure that further violations of the terms of the card do not occur, including denial of access to the card until the indebtedness is repaid by the employee.
- f. Notify NBS of any terminations or change in employment status of any Participant. Employer is responsible for any amounts expended by any Participant or former Participant during the period ending five (5) business days after NBS is notified by the Employer of any such employment status change.

C. Obligations Related to Plan Compliance and Record-keeping

1. *Promptly Respond to Plan Data Requests.* Provide NBS with information requested by NBS to ensure the Plan complies with federal law. The Employer's response shall be subject to the requirements of Sections 5, 8, and 9 of the Service Agreement.
2. *Provide Complete and Accurate Information.* In order to provide the Plan with accurate nondiscrimination testing results and to ensure Plan compliance in operation, the information provided by the Employer must be complete and accurate. As used in this section III.C.2., "complete and accurate" includes, if applicable, all information regarding the Employees and benefits of any companies with which the Employer is affiliated as a member of a controlled group or affiliated service group of companies.
3. *Make Plan Corrections to Address Failed Nondiscrimination Tests.* When necessary, the Employer shall take the corrective measures set forth in the Plan Document to resolve any nondiscrimination testing failure reported to the Employer by NBS. NBS will in no way be held responsible for plan testing failures or the costs related to any correction.

NATIONAL BENEFIT SERVICES, LLC

APPENDIX 1 - WELFARE BENEFIT DISCRIMINATION TESTING PROCEDURES

Overview: This document describes the discrimination testing services NBS provides for Cafeteria Plans, component benefits offered through Cafeteria Plans, and HRAs. The rules NBS follows for testing are found in Internal Revenue Code ("IRC") §§ 105, 125, 129 and 410, as well as the proposed 125 regulations and final regulations promulgated under IRC §§ 105 and 410. Where official guidance from the Treasury Department regarding how the tests must be performed is absent or unclear, NBS generally follows a conservative interpretation of relevant official and unofficial Treasury guidance. This document identifies the instances where the federal requirements are unclear or absent and NBS's interpretation of industry practices and the relevant official and unofficial treasury guidance. In the event that the Plan or a component benefit offered under the Plan fails testing, NBS will consult with Employer regarding the results. Any corrections (i.e. the amount of the benefits to be realized as taxable income by the highly-compensated participants) for failed tests shall be applied according to the terms of the Plan Document. NBS's testing services also include testing of projected benefits. If the Plan fails testing based upon projected data, NBS will consult with Employer regarding how Employer wishes to prevent failure of the final tests. Employer is fully responsible for the correction of any projected test failures reported to Employer by NBS.

Limitations: The results of tests performed by NBS are an accurate representation of the nondiscrimination status of the benefits tested unless the information provided by the Employer is incorrect or incomplete. Without limiting the foregoing, the Employer is deemed to have provided incorrect or incomplete information if the Employer fails to provide requested information pertaining to any of the employees of the Employer (including the employees of an affiliated employer, if the employer is part of a controlled group or affiliated service group of companies).

Information Requested by NBS:

In lieu of requesting that the plan provide full income census data for all employees, NBS requests only the information it needs to conduct complete and accurate tests. Accordingly, all of the information requested by NBS to conduct discrimination testing described in this document is necessary for NBS to conduct testing services for the plan. This includes income information for certain employees for both the plan year being tested as well as for the preceding plan year. Failure to provide all of the information requested will make it impossible for NBS to perform testing services for the plan, and will cause significant delay in obtaining testing results.

Procedures Specific to Plans and Benefits:

General note regarding testing standards. The Code's testing requirements differ from benefit to benefit. While the general concepts and procedures used in testing are typically the same, the specific definitions, including who may be excluded from testing as well as the composition of the group of employees that may not be favored by the Plan in offering and providing benefits may differ from one benefit type to another. NBS applies the definitions and requirements specific to each benefit in the tests it performs.

§ 125 Cafeteria Plan Tests (includes all benefits offered under the Plan):

Eligibility Test: NBS tests the Plan to ensure that it does not discriminate in favor of highly compensated individuals as to eligibility to participate as required under § 125(b)(1)(A) of the Code. NBS's testing tools identify "highly compensated individuals" using all of the definitions provided in the code and regulations. When an Employer indicates it has made a "top paid group election" in any qualified benefit plan it offers (including retirement plans) only employees in the top 20% ranked by compensation are included in the count of HCIs on the basis of income. For purposes of the 125 eligibility test, the only employees excluded from testing are union employees (unless offered a benefit under the plan), nonresident aliens without U.S. source income, and employees or former employees who continue to benefit under the plan because of a COBRA continuation election. Similarly, the tests performed by

NBS assume that an employee is considered to “benefit” under the cafeteria plan if the employee is eligible to benefit. One component of the Eligibility test is the requirement that the plan meet a “non-discriminatory classification test.” The code specifically identifies the nondiscriminatory classification requirements applicable to retirement plans (found in § 410(b) of the IRC) as meeting this requirement. Accordingly, a plan which passes either the safe or unsafe harbor percentages tests found in § 410(b) will meet this requirement.

Contributions and Benefits Test: The language of the proposed regulations regarding the contributions and benefits test is unclear as to whether a plan may pass the test if the benefit passes **either** the contributions **or** the benefits component of the tests, or if a plan is required to pass both. NBS interprets the regulations as permitting a plan to pass this test if it can meet the requirements of either the contributions test or the benefits test. This test measures whether the ratio that either employer contributions or total benefits bears to gross income for non-highly compensated employees is not less than the ratio contributions or benefits bears to the gross income of highly compensated employees.

Key Employee Concentration Test: NBS tests the Plan to verify that the value of qualified benefits provided to key employees no more than 25% of the total value of all such benefits provided for all employees under the Plan as required under § 125(b)(2) of the Code.

Health FSA and HRAs:

Eligibility Test: NBS utilizes the three alternative tests identified in § 105(h)(3)(A) of the Code to ensure that the Health FSA benefit does not discriminate in favor of highly compensated individuals as to eligibility to participate as required under § 105(h)(2)(A). The § 105 regulations specifically state that the third alternative test is a “nondiscriminatory classification test,” but do not provide any details as to how this test should be performed. The regulations do indicate, however, that same principles used for conducting the safe and unsafe harbor percentages tests for retirement plans should be applied. NBS interprets the requirement to apply the § 410(b) principles as supporting the use of the safe and unsafe harbor percentages tests to meet the “nondiscriminatory classification test” requirements under § 105(h). For purposes of this test, NBS takes the conservative approach assuming that an employee is “benefitting” only if he or she has elected benefits under the plan.

Benefits Test: NBS tests FSAs and HRAs to ensure that the same benefit provided to Participants who are highly compensated individuals is provided to all other Participants as required under Code §§ 105(h)(2)(B) and 105(h)(4).

DCAP:

Eligibility Test: NBS tests the DCAP benefit to ensure that it does not discriminate in favor of highly compensated employees or their dependents in terms of eligibility as required under § 129(d)(3) of the Code. For purposes of this test, because DCAP benefits are subject to the 55% average benefits test (which takes into consideration the degree to which non-highly compensated participants benefit under the plan), the DCAP test assumes that an employee “benefits” under the plan if he or she is eligible to elect benefits.

Contributions and Benefits Test: NBS tests the DCAP benefit to ensure that contributions and benefits that are available to eligible employees under the DCAP do not discriminate in favor highly compensated employees or their dependents as required under § 129(d)(2) of the Code. In contrast to the § 125 contributions and benefits test, this test is satisfied if the contributions and benefits offered to highly compensated employees or their dependents are also offered to non-highly compensated employees.

More-Than 5% Owners Concentration Test: NBS tests the DCAP benefit to ensure that no more than 25% of the total amount paid for dependent care assistance during the year is provided to more than 5% shareholders or owners or their spouses or dependents as required under § 129(d)(4) of the Code.

55% Average Benefits Test: NBS tests the DCAP benefit to ensure that the average DCAP benefits provided to employees who are not highly compensated employees is at least 55% of the average benefits provided to highly compensated employees as required under § 129(d)(8) of the Code.

Premium Only Payment (POP) Plans:

Eligibility Test: NBS tests the POP to ensure that it does not discriminate in favor of highly compensated individuals as to eligibility to participate as required under § 125(b)(1)(A) of the Code. (Under a special IRS “safe harbor,” a plan that offers health premium payments as its exclusive benefit is treated as nondiscriminatory if it satisfies the eligibility requirements of IRC § 125(b)(1)(A)).

Procedures Applicable to Specific Circumstances.

In contrast with retirement plan discrimination testing, the only correction available for a welfare benefit plan which fails testing is to re-categorize a portion of the benefit election dollars of highly compensated individuals as taxable income. In most cases, the Plan Document describes the specific method which must be followed when making this correction. NBS will assist the Employer with determining how to calculate the amount of income, as well as which employees are impacted by the correction.

For potential test failures identified prior to the end of the plan year, NBS may recommend certain plan design changes which the plan may implement in order to avoid test failures. Such recommendations are based entirely upon the information provided by the Employer, so NBS cannot guarantee whether the correction will in fact allow the plan to avoid test failure for the year-end testing.

NATIONAL BENEFIT SERVICES, LLC

APPENDIX 2 - HEALTH FLEXIBLE SPENDING ARRANGEMENT CLAIMS PROCEDURES

Introduction

This document describes what NBS does when a claim from a participant in the Employer's Plan ("Participant") is received. It does not include a list of every possible eligible or ineligible expense. This document does not, in whole or in part, replace the discretion which the Employer exercises in its role as the Plan administrator, in deciding whether a particular claim should be paid.

The procedures described in this document are intended by NBS to balance compliance with federal requirements and the cost effective operation of the Plan. The Employer, acting in its dual roles as sponsor and administrator of the Plan, should notify NBS in writing to request more stringent adjudication criteria than those described in this document. Acceptance by the Employer of the terms of the Service Agreement constitutes a request by Employer for NBS to perform the Services as described in Schedule A and the Appendices to the Service Agreement.

Claims Procedure – Governing Standards

NBS processes Health Flexible Spending Arrangement ("FSA") claims according to the terms of the Plan Document¹, which incorporates by reference relevant federal requirements. As used in this Appendix, the term "federal requirements" means the requirements of the Internal Revenue Code ("IRC"), including without limitation sections 125, 105 and 213 as interpreted in final and proposed regulations, and other relevant treasury guidance.

General Claims Procedure (All Claims)

Upon receipt of a claim, NBS will:

- (1) Verify Plan limits or election limits are not exceeded;
- (2) Confirm the expense is a qualifying expense for medical care under § 213 of the IRC and the plan document²;
- (3) Obtain the Participant's signed certification stating that, among other things, the expense was qualified (for debit card transactions and electronically-submitted claims use of the card or electronic submission satisfies this certification requirement); and
- (4) Confirm receipt of a written statement from an independent third party evidencing the date, nature, and amount of the expense, unless the expense meets the requirements of IRS proposed regulation § 1.125-6(e) or § 1.125-6(f) for automatic or real-time claims substantiation. For limited purpose and post-deductible health FSAs, substantiation from an independent third party is also required to establish that the Participant has met the deductible requirements or that the claim is for limited-purpose-eligible expenses.

¹ If using a custom plan document which is not prepared by NBS, the employer should review the plan document to ensure that the necessary federal requirements are included.

² NBS uses a third-party resource listing of common eligible and ineligible expenses in determining whether a particular claim is for an eligible § 213(d) expense. The document NBS uses can be found at Section XX.M. of the EBIA Benefits Compliance Library publication entitled "Cafeteria Plans." A copy of this document may be requested from NBS for reference purposes only.

Debit Card Claims

The Code § 125 proposed regulations contain special requirements applicable to claims paid with a debit card. Except where noted, the NBS procedures described below are consistent with the requirements from the proposed regulations:

- (1) Before receiving a debit card, a Participant must agree in writing that he or she will only use the card to pay for medical expenses; that the card will not be used for any expense that has already been reimbursed; that the Participant will not seek reimbursement under any other health plan for any expense paid for with a debit card; and that he or she will acquire and retain sufficient documentation (including invoices and receipts) for any expense paid with the debit card.
- (2) Debit cards issued by NBS include a statement that the agreements described in the previous section are reaffirmed each time the employee uses the card.
- (3) The amount available through the NBS-issued debit card equals the amount elected by the employee for the health FSA for the cafeteria plan year, and is reduced by amounts paid or reimbursed for § 213(d) medical expenses incurred during the plan year.
- (4) The debit card is cancelled by NBS within 5 business days of receipt of notice from Employer that an employee ceases to participate in the FSA. *Note: The proposed § 125 regulations state that the debit card should be canceled immediately when an employee ceases to participate in the FSA.*
- (5) The card is limited for use with the following providers:
 - (i) Physicians, dentists, vision care offices, hospitals, other medical care providers (as identified by the merchant category code);
 - (ii) Stores with the merchant category code for Drugstores and Pharmacies if, on a location by location basis, 90 percent of the store's gross receipts during the prior taxable year consisted of items which qualify as expenses for medical care described in section 213(d); and
 - (iii) Stores that have implemented the inventory information approval system under paragraph (f). Claims based on payments to medical care providers and stores described above are substantiated as described below.

Substantiation of expenses incurred at medical care providers and certain other stores with Drug Stores and Pharmacies merchant category code.

- (1) Automatic claims substantiation for copayment matches.
 - (i) Matching copayments. If the Plan has copayments in specific dollar amounts, transactions at a medical care provider which equal an exact multiple of up to five times the dollar amount of the copayment under the health plan are automatically substantiated.
 - (A) Tiered copayments. If a health plan has multiple copayments for a particular benefit, (for example, tiered copayments for a pharmacy benefit), exact matches of multiples or combinations of up to five copayments are automatically substantiated.
 - (B) Independent verification of copayment required. Employer must ensure that the copayment schedule required under the health plan is accurately reflected in NBS's administration system.
- (2) Automatic substantiation for certain recurring medical expenses. Claims to reimburse expenses for the same amount incurred with the same provider as a previously-approved claim, which follow the approved claim a regularly-recurring interval are automatically substantiated.
- (3) Real-time substantiation. NBS may approve claims in real time if a third party (not the Participant or spouse or a dependent) provides, at the time and point of sale, information to verify to NBS (including by email, the internet or telephone) that the charge is for an eligible medical expense.

Inventory information approval system.

The Employer, in its role as Administrator of the Plan, is required to verify that the inventory information approval system (IIAS) described in this part complies with federal standards. Independent third parties have established the IIAS for use with FSA claims and NBS relies upon such third parties' representation that it complies with federal standards. Employer may contact NBS for additional information regarding the IIAS, but should verify compliance with federal standards directly with the IIAS third parties. NBS does not independently verify that the IIAS is compliant.

- (1) Automatic substantiation of expenses through the IIAS. As described below, debit card transactions using an approved IIAS (described below) are automatically substantiated.
 - (i) The IIAS compares the inventory control system description (such as found in a stock-keeping unit (SKU) system) of the items purchased using the card against a list of medical expenses eligible under Code § 213(d).
 - (ii) The eligible medical expenses included in the purchase are totaled and the IIAS system approves the use of the card only for the amount of the eligible medical expenses.
 - (iii) Any balance owing for items which are not eligible for reimbursement (i.e. not § 213(d) eligible or which exceed the remaining Participant FSA balance) must be paid through another means.
 - (iv) Any attempt to use the card at non-participating merchants or service-providers must fail.

Other Debit Card Expenses

The NBS procedure described in this section is an effort to minimize the risk that claims which do not meet the automatic and real-time substantiation standards described above are for ineligible expenses. Each claim that does not contain the approved IIAS encoding is reviewed to determine whether it is for the type of services or provided by a service provider that typically does not provide ineligible services under § 213(d) of the IRC. Claims that can be determined to meet these criteria are approved. The particular standards established by NBS for this purpose are described in the next section.

Electronic Claims Processing Criteria for Non-IIAS Transactions

Claims initiated by the service provider which are not entered under an approved IIAS code are approved if they fall under one of the following categories, unless excluded under the Plan Document:

- **Urology**
- **Ear Nose and Throat**
- **Vision**
- **Allergies/Asthma**
- **Radiology-X-Ray / Imaging**
- **Deductibles**
- **Co-Insurance**
- **Pharmacies**
- **Pediatric Services**
- **Urgent care**
- **Lab work**
- **Nephrology (Kidney)**
- **Endocrinology**
- **Family practice**
- **Reproductive/OBGYN services**
- **Diabetes treatments**
- **Diagnostic Services**
- **Psychiatry**
- **Immunization**
- **Cardiology**
- **Acupuncture**
- **Pathology**
- **Oncology**
- **Physical Therapy**
- **Endodontic treatment**
- **Bone and Joint**
- **Chiropractic services**
- **Orthodontia**

NBS reviews each claim that does not contain the approved IIAS encoding to determine whether the service or provider is one that typically meets IRC § 213(d) standards. Substantiation requests are sent for significant claims which are not clearly for eligible expenses.

Final determination of whether a claim is an eligible medical expense. In the event that a claim is received by NBS which does not clearly meet the requirements for an eligible medical expense under the Plan Document, the Code, and Treasury rulings and regulations, NBS will deny the claim. If the Employer receives a request from a Participant inquiring as to why the claim was denied, the Employer should direct the Participant to follow the Plan's appeal procedures which are found in the SPD. Employer may consult with the assigned NBS Account Manager or management team regarding the claim denial. All final determinations as to a Participant's entitlement to benefits under the Plan are to be made by Employer, acting in its capacity as the Plan administrator, including any determination upon appeal of a denied claim for benefits under the Plan.

SCHEDULE 'B'

**WEBB COUNTY
FSA PLAN
FEE SCHEDULE**

Rate Guarantee January 1, 2022 through December 31, 2025

ADMINISTRATION SERVICES

Plan Document		\$300 <i>Paid by Broker- TEB Benefits Group</i>
Full Plan Administration		\$3.50 / Participant / Month <i>Paid by Broker- TEB Benefits Group</i>
Minimum Monthly Bill		\$75 <i>Paid by Broker- TEB Benefits Group</i>

- *Includes: Daily Claim Processing, Choice of Direct Deposit or Checks for Participant's Claim Payments, Internet Access Systems for Participants to Check Balance, Last Claims Paid, Annual Amount Remaining, etc.*

Annual Reports		\$200.00 <i>Paid by Broker- TEB Benefits Group</i>
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- *Includes: All Discrimination Tests, Re-Enrollment of Employees and Report Tax Savings to Company & Participants.*

Form 5500 Filing (if applicable)		\$300.00
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- *Includes: Up to 2 hours of work towards collection of necessary forms, Form 5500 preparation, and electronic filing with DOL via EFAST2 system. Work beyond 2 hours will be billed at the hourly rate specified below.*

MISCELLANEOUS SERVICES

Document Updates/Amendments		\$150
Takeover of prior plan year, grace, runout, or rollover		\$250 (if applicable)
Debit Card		Included
Audit Coordination fee (first 3 hours)		\$550
Audits (extra hourly work)		\$200/hour
Extra Hourly Work		\$150/hour



THIRD PARTY PAYMENT AGREEMENT

WEBB COUNTY

This third-party payer agreement (hereinafter "Delegation Agreement") is entered into as of January 1, 2022, (hereinafter "Execution Date") by and among the following parties:

Webb County, (hereinafter "Webb County" and "Delegating Party"), a Texas government entity, with its principal place of business at 1110 Washington, Suite #204, Laredo, TX 78040;

TEB Benefits Group, (hereinafter "TEB Benefits Group" and "Delegatee"), a Texas corporation, with its principal place of business at 702 Wyoming Avenue, El Paso, TX 79902;

and

National Benefit Services, LLC, (hereinafter "NBS" and "Obligee"), a Utah limited liability company, with its principal place of business at 8523 S. Redwood Road, West Jordan, UT 84088.

RECITALS

WHEREAS, the Delegating Party and NBS entered into a service agreement for third party administrative services and products (hereinafter "Service Agreement");

WHEREAS, under provision 5(l) of the Service Agreement states the Delegating Party is responsible for payment of all amounts that may become due and owing under the Service Agreement;

WHEREAS, Schedule B of the Service Agreement states the costs for third party administrative services and products;

WHEREAS, provision 14 of the Service Agreement states the respective billing, payment, and collection procedures and obligations of the Delegating Party and NBS;

WHEREAS, the Delegating Party desires to delegate its obligations under provisions 5(l) and 14 of the Service Agreement to Delegatee;

WHEREAS, the Delegatee is willing fulfill the obligations under provisions 5(l) and 14 of the Service Agreement on behalf of the Delegating Party;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and sufficiency of which consideration is acknowledged, the Parties agree as follows:

AGREEMENT

1. Delegating Party shall comply with all other conditions and obligations of the Service Agreement with the exclusion of those delegated to Delegatee within this Delegation Agreement.
2. Delegatee assumes and shall fulfill the obligations under provisions 5(l) and 14 of the Service Agreement, which by this reference are fully incorporated herein, on behalf of the Delegating Party.
3. Upon receipt of an accurately invoiced statement for services and products, Delegatee shall pay the fees for services rendered on behalf of the Delegating Party and products as specified in Schedule B of the Service Agreement, a copy of which is attached hereto and by this reference fully incorporated herein.

4. If NBS does not receive payment in full within thirty (30) days of the statement date, the Delegating Party's account will be subject to a FINANCE CHARGE at the highest allowable rate under Utah law, but not to exceed one-and-one-half percent (1.5%) per month (18% APR).
5. If NBS does not receive payment in full within sixty (60) days of the statement date, NBS may seek immediate full payment from the Delegating Party in addition to other remedies available to NBS under the Service Agreement.
6. If Delegatee is unable to make payment within thirty (30) days of the statement, Delegatee shall notify NBS and the Delegating Party in writing of such inability as soon as reasonably possible.
7. NBS's acceptance of any payment by Delegatee on behalf of Delegating Party will not constitute a waiver of any rights NBS may have under the Service Agreement or by law to collect from the Delegating Party amounts due and owing to NBS for services provided.
8. Delegating Party understands that it is fully responsible for all unpaid fees, and Delegating Party shall pay in full all outstanding financial obligations under this Delegation Agreement or the Service Agreement upon termination of this Delegation Agreement.
9. **Termination.** A Party may terminate this Delegation Agreement upon thirty (30) days written notice to all other Parties.
10. **No Assignment/Delegation.** No Party may assign any of its rights or delegate any performance under this Delegation Agreement.
11. **Integration and Severability.** This Delegation Agreement, together with all attachments hereto, including all schedules and exhibits, represents the entire agreement of the Parties and supersedes any prior agreement as to the subject matter contained herein. In the event that any provision or portion of this Delegation Agreement is declared void or unenforceable in a court of law, the remaining provisions of this Delegation Agreement will remain binding upon the Parties as if the void or unenforceable provision had not been originally included.
12. **Governing Law.** This Delegation Agreement will be governed by and construed in accordance with the laws of the State of Texas.
13. **Jurisdiction.** The courts of the State of Texas are to have exclusive jurisdiction to decide and settle and dispute or claim arising out of or in connection with this Delegation Agreement.
 - 13.1. Each Party expressly consents and submits to this exclusive jurisdiction.
 - 13.2. Each Party expressly waives the right to challenge this exclusive jurisdiction as improper or inconvenient.
14. **Multiple Counterparts.** This Delegation Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which, taken together, will constitute and will be deemed one and the same instrument.
15. **Warrant of Legal Authority.** Each Party warrants that the individuals who have signed this Service Agreement have the actual legal power, right, and authority to make this Delegation Agreement and bind each respective Party.

(rest of page intentionally blank)

IN WITNESS WHEREOF, the Parties hereto have executed this Delegation Agreement by their duly authorized representatives, and caused it to be delivered, all as of the Effective Date.

OBLIGEE

National Benefit Services, LLC

By: Paul R Lovell
(signature)

Name: Paul R Lovell
(print name)

Title: CEO
(print title)

DELEGATING PARTY

Webb County

By: _____
(signature)

Name: _____
(print name)

Title: _____
(print title)

DELEGATEE

TEB Benefits Group

By: Eva Enriquez
Eva Enriquez (Oct 27, 2021 12:55 MDT)
(signature)

Name: Eva Enriquez
(print name)

Title: Vice President
(print title)



WELFARE BENEFITS PLAN

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (hereinafter "**BAA**") is entered into effective as of the date last signed below (hereinafter "**Effective Date**"), by and between National Benefit Services, LLC, a Utah limited liability corporation (hereinafter "**NBS**") and the Welfare Benefits Plan or Plans (hereafter "**Covered Entity**") sponsored by Webb County (NBS and the Covered Entity are collectively referred to herein as the hereinafter "**Parties**"), with reference to the following recitals:

RECITALS

WHEREAS, Covered Entity is an employee welfare benefit plan (hereinafter "**Plan**") that provides health care benefits to the employees of Webb County;

WHEREAS, NBS is a third party administrator currently providing, or which will provide, services to the Covered Entity;

WHEREAS, NBS's services are required and have been retained in connection with the administration of the benefits offered through the Plan;

WHEREAS, in the course of providing services to the Covered Entity, NBS may create, receive, maintain, or transmit protected health information (hereinafter "**PHI**") as defined in the Health Insurance Portability and Protection Act of 1996 (hereinafter "**HIPAA**") pertaining to participants and beneficiaries of the Plan on Covered Entity's behalf;

WHEREAS, the Secretary of Health and Human Services has issued regulations requiring a contract between the Covered Entity and NBS in order to protect against the unauthorized Use and Disclosure of PHI by NBS;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this BAA and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. DEFINITIONS

Catch-All Definitions

The following terms used in this BAA shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information (hereinafter "**Unsecured PHI**"), and Use.

Specific Definitions

- (a) **Breach Notification Rule**. "Breach Notification Rule" means the regulations regarding Notification in the Case of Breach of Unsecured Protected Health Information at 45 CFR Part 160 and Part 164, subparts A and D.
- (b) **Business Associate**. "Business Associate" has the same meaning as the term "business associate" at 45 CFR §160.103, and as used in this BAA, means NBS.
- (c) **Covered Entity**. "Covered Entity" has the same meaning as the term "covered entity" at 45 CFR §160.103, and as used in this BAA, means the Covered Entity.
- (d) **Disclose**. "Disclose" means to make a disclosure of information, as the term "disclosure" is defined at 45 CFR §160.103.

- (e) **Electronic Protected Health Information.** "Electronic Protected Health Information" (hereinafter "**Electronic PHI**") has the same meaning as the term "electronic protected health information" in 45 CFR §160.130, limited, however, to the information created or received by Business Associate from or on behalf of Covered Entity.
- (f) **Enforcement Rule.** "Enforcement Rule" means the Enforcement Rule at 45 CFR Part 160, subparts C, D, and E.
- (g) **HIPAA Rules.** "HIPAA Rules" means the regulations set forth at 45 CFR Parts 160, 162, and 164 including the Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule.
- (h) **Protected Health Information.** "Protected Health Information" and "PHI" have the same meaning as the term "protected health information" in 45 CFR §160.103, limited, however, to the information created or received by Business Associate from or on behalf of Covered Entity.
- (i) **Privacy Rule.** "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E.
- (j) **Security Rule.** "Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information in 45 CFR Part 160 and Part 164, subparts A and C.
- (k) **Service Agreement.** "Service Agreement" means any agreement between Business Associate and Covered Entity either executed contemporaneously with, or already in effect at the time of execution of, this BAA for the provision of services by the Business Associate on behalf of the Covered Entity.
- (l) **Unsuccessful Security Incidents.** "Unsuccessful Security Incidents" means, without limitation, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful logon attempts, denials of service, or any combination of the above, so long as no such incident results in unauthorized, access, Use, or Disclosure of PHI.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- (a) Not Use or Disclose PHI other than as permitted or required by the Service Agreement, by this BAA, or as Required By Law;
- (b) Use appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by or permitted under this BAA.
- (c) Comply with the applicable requirements of the Security Rule, including to reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity;
- (d) Report to Covered Entity any of the following of which Business Associate becomes aware: (1) any Use or Disclosure of PHI not provided for by this BAA, including Breaches of Unsecured PHI as required at 45 CFR §164.410; and (2) any Security Incident. Such notification will comply with the Breach Notification Rule at 45 CFR §164.410, as applicable. If a law enforcement official requests a delay in notification in accordance with 45 CFR §164.412, Business Associate may delay notifying Covered Entity for the applicable time period specified by such law enforcement official. The parties acknowledge that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents for which no additional notice to Covered Entity is required;
- (e) Mitigate, to the extent practicable, any harmful effect that is known by Business Associate of a Security Incident related to PHI or any Use or Disclosure of PHI by Business Associate in violation of the requirements and obligations of this BAA;
- (f) In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate through this BAA with respect to such information, including complying with the applicable requirements of the Security Rule;
- (g) If Business Associate has PHI in a Designated Record Set, provide access, at the Covered Entity's request, to PHI in any applicable Designated Record Set, to the Covered Entity or, as directed by Covered Entity, to an Individual as necessary to satisfy the Covered Entity's obligations under 45 CFR §164.524;

- (h) If Business Associate has PHI in a Designated Record Set and as directed or agreed to by the Covered Entity, amend PHI in a Designated Record Set pursuant to 45 CFR §164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR §164.526;
- (i) Maintain and make available the information required to provide an accounting of Disclosures of PHI to the Covered Entity as necessary to satisfy the Covered Entity's obligations under 45 CFR §164.528.
- (j) To the extent the Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations;
- (k) Make its internal practices, books, and records, including policies, procedures, and PHI, relating to the Use or Disclosure of PHI available to the Secretary, at the request of either the Secretary or Covered Entity, for purposes of determining compliance with the HIPAA Rules; and
- (l) Promptly notify Covered Entity of: (1) any request by the Secretary to examine such internal practices, books, records, policies, procedures, or PHI; and (2) the results and disposition of any such request. Nothing in this Section may be construed as a waiver of any legal privilege or of any protections for confidential commercial information.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

Except as otherwise limited in this BAA, Business Associate:

- (a) May only Use or Disclose PHI on behalf of, or to perform services to, Covered Entity for such purposes as set forth in the Service Agreement, which agreement's relevant provisions regarding, and the purposes of, such services are fully incorporated by this reference herein;
- (b) May Use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;
- (c) May Disclose PHI for the proper management and administration of Business Associate, provided that such Disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom such information is Disclosed that: (1) such information will remain confidential and Used or further Disclosed only as Required By Law or for the purpose for which such information was Disclosed to such person; and (2) such person promptly notifies Business Associate of any instances of which such person is aware in which the confidentiality of such information is breached;
- (d) May Use or Disclose PHI as Required By Law or to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1);
- (e) Agrees to make Uses, Disclosures, and requests for PHI consistent with Covered Entity's Minimum Necessary policies and procedures;
- (f) May not Use or Disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity;
- (g) Business Associate may provide Data Aggregation services relating to the Health Care Operations of the Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

IV. OBLIGATIONS OF COVERED ENTITY

Covered Entity shall promptly notify Business Associate of:

- (a) Any limitation in the Notice of Privacy Practices of Covered Entity under 45 CFR §164.520, to the extent that (1) such limitation may affect Business Associate's Use or Disclosure of PHI, or (2) provide for confidential communications of PHI pursuant to 45 CFR §164.522(b), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communications obligations that Business Associate must follow. Covered Entity shall promptly notify Business Associate in writing of the termination of any such restriction or confidential communications requirement and, with respect to termination of any such restriction, instruct Business Associate whether any of the PHI will remain subject to the terms of the restriction.
- (b) Any changes in, or revocation of, the permission by an applicable Individual to Use or Disclose his or her PHI, to the extent that such changes may affect Business Associate's Use or Disclosure of PHI.

- (c) Any restriction to the Use or Disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR §164.522, or otherwise, to the extent that such restriction may affect Business Associate's Use or Disclosure of PHI.

V. PERMISSIBLE REQUESTS BY COVERED ENTITY

Except for Disclosures permitted under Section III above, Covered Entity shall not request that Business Associate Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Covered Entity.

VI. TERM AND TERMINATION

- (a) **Term.** The Term of this BAA shall begin on the Effective Date and shall terminate either on the date of termination of all Service Agreements which require the exchange of PHI or on the date the Covered Entity terminates this BAA for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- (b) **Termination for Cause.** Business Associate authorizes termination of the BAA if Covered Entity determines Business Associate has violated a material term of this BAA, and Business Associate has not cured the breach or ended the violation within thirty (30) days of the date Covered Entity notified Business Associate of the suspected breach or violation. Alternatively, Covered Entity may immediately terminate this BAA if Business Associate has violated a material term of this BAA and cure is not possible.
- (c) **Obligation of Business Associate upon Termination.** Upon termination of this BAA for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity in writing, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision applies to PHI that is in possession of Subcontractors or agents of Business Associate.

Notwithstanding the foregoing, if Business Associate determines the returning or destroying the PHI is infeasible or in violation of law, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction of such PHI infeasible. Upon mutual agreement of the parties that return or destruction of such PHI is infeasible or in violation of law, Business Associate shall extend the protections of this BAA to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible or in violation of law, for so long as Business Associate maintains such PHI.

- (d) **Survival.** The obligations of the Business Associate under this Section VI will survive the termination of this BAA.

VII. MISCELLANEOUS

- (a) **Regulatory References.** A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.
- (b) **Amendment.** The parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for compliance with the requirements of HIPAA and any other applicable law, including but not limited to the Privacy Rule and the Security Rule.
- (c) **Interpretation.** Any ambiguity in this BAA shall be resolved to permit compliance with the HIPAA Rules.
- (d) **Headings and Language.** Headings are inserted for the convenience for the parties only and are not to be considered when interpreting this BAA. All section references in this BAA, unless otherwise clearly indicated, are to sections within this BAA.
- (e) **Integration.** This BAA, together with all attachments hereto, including all schedules and exhibits, represents the entire agreement between the parties and supersedes any prior or contemporaneous agreement, written or oral, as to the subject matter contained herein.
- (f) **Severability.** If any provision of this BAA is held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this BAA is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

- (g) **Authority, Nature of Relationship.** Neither party nor its respective directors, officers, employees, affiliates, agents, or representatives; will, under any circumstances, be considered an agent, partner, joint venture, or representative of the other party for the purposes of this BAA. This BAA does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party.
- (h) **No Third-Party Beneficiaries.** The provisions of this BAA are for the exclusive benefit of the parties to this BAA, and no third party is an intended beneficiary of, or may be entitled to rely on, the provisions of this BAA. For the avoidance of doubt, nothing expressed or implied in this BAA may be construed to confer upon or give any individual or entity other than the parties to this BAA, and their respective successors and permitted assigns, any rights or remedies under this BAA or by reason of this BAA or any transaction or circumstance contemplated by this BAA.
- (i) **Governing Law.** This BAA and the legal relationship between the parties is governed and construed in accordance with applicable federal law and the substantive laws of the State of Texas without giving effect to the principles of conflict of laws thereof.
- (j) **Counterparts.** This BAA may be executed in counterparts which, taken together, shall constitute the whole of this BAA between the parties. Facsimile and electronic signatures are binding and will be deemed to be original signatures.
- (k) **Waiver.** The failure of either party to enforce any provision of this BAA will not be construed as a waiver or a limitation or that party's right to subsequently enforce and compel strict compliance with every provision of this BAA. Waivers must be in writing and signed by the waiving party to be effective.
- (l) **Notices.** Any notice, demand, or request given in accordance with this BAA shall be given by personal delivery; by messenger delivery; by facsimile transmission; by placing said notice in the United States mail, registered or first-class, postage prepaid; or by sending such notice via an overnight courier service. Notice shall be deemed given when delivered to a party, when the facsimile transmission occurs, or on the date when said notice is deposited in the United States mail, postage prepaid. The current mailing addresses and facsimile numbers where notice may be served upon the parties are:

For Business Associate:

National Benefit Services, LLC
P.O. Box 6980
West Jordan, UT 84084
Fax: (801) 355-0928

For Plan:

Webb County
1110 Washington, Suite #204
Laredo, TX 78040
Fax: (956) 523-5012

Any change of address or facsimile will be delivered to the other party within thirty (30) days of the change.


- (m) **Warrant of Legal Authority.** Each party warrants that the individuals who have signed this BAA have the actual legal power, right, and authority to make this BAA and bind each respective party.

IN WITNESS WHEREOF, the parties have executed this BAA effective as of the day and year last signed below.

BUSINESS ASSOCIATE:
National Benefit Services, LLC

COVERED ENTITY:
Webb County

(Authorized Signer for Employer)

By: 
Name: Andrew Haynie
Title: President
Date: October 22, 2021

By: _____
Name: _____
Title: _____
Date: _____



HIPAA Notice of Privacy Practices

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

Your Information. Your Rights. Our Responsibilities.

Your Rights

You have the right to:

- Get a copy of your health and claims records
- Correct your health and claims records
- Request confidential communication
- Ask us to limit the information we share
- Get a list of those with whom we've shared your information
- Get a copy of this privacy notice
- Choose someone to act for you
- File a complaint if you believe your privacy rights have been violated

➤ *See page 3 for more information on these rights and how to exercise them.*

Your Choices

You have some choices in the way that we use and share information as we:

- Answer coverage questions from your family and friends
- Provide disaster relief
- Market our services and sell your information

➤ *See page 4 for more information on these rights and how to exercise them.*

Our Uses and Disclosures

We may use and share your information as we:

- Help manage the health care treatments you receive
- Run our organization
- Coordinate payment for your health services
- Administer your plan
- Help with public health and safety issues
- Comply with the law
- Address workers' compensation, law enforcement, and other government requests
- Respond to lawsuit and legal actions

➤ *See pages 4 and 5 for more information on these rights and how to exercise them.*

About this Notice

The Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) imposes numerous requirements on employer health plans regarding how certain individually identifiable health information—known as protected health information or **PHI**—may be used and disclosed. “Protected health information” is information that is maintained or transmitted by a group health plan, which may identify you and that relates to your past, present, or future physical or mental health condition and related health care services.

About NBS

National Benefit Services, LLC (“**NBS**”) serves as a third party administrator for welfare benefit plans (collectively, the “**Plans**”) sponsored by various plan sponsors (collectively “**Plan Sponsors**”). This Notice describes how NBS, and any third party that assists NBS in the administration of the Plans, may use and disclose your protected health information for treatment, payment, or health care operations and for other purposes that are permitted or required by law. This Notice also describes your rights to access and control your protected health information.

Our Pledge

We understand that medical information about you and your health is personal. NBS is committed to protecting medical information about you and will use it to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request of it. We do create a record of the health care claims reimbursed under a flexible spending account “**FSA**” for the Plans’ administration purposes.

This Notice applies to all the PHI that NBS maintains or transmits. For group medical plans, the appropriate insurance carrier’s Notice of Privacy Practices will apply, except for the limited PHI the group medical plans may receive and maintain from you or NBS when you ask NBS to assist you in a claims processing or benefit determination dispute, information related to your enrollment or disenrollment in a Plan, and certain summary health information.

This Notice will tell you about the ways in which NBS may use and disclose medical information about you. Additionally, this Notice will describe our obligations and your rights regarding the use and disclosure of your medical information.

Other Privacy Practice Notices

The plan sponsor of the welfare benefit plans offered through your employer may have different policies or notices regarding the plan sponsor’s use and disclosure of your medical information.

Your personal doctor or health care provider may have different policies or notices regarding their use and disclosure of your medical information.

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Your Rights

When it comes to your health information, you have certain rights.

This section explains your rights and some of our responsibilities to help you.

Get a copy of your health and claims records

- You can ask to see or get a copy of your health and claims records and other health information we have about you. Ask us how to do this.
- We will provide a copy or summary of your health and claims records, usually within 30 days of your written request. We may charge a reasonable, cost-based fee for the costs of copying, mailing, or other supplies associated with your request. We may say “no” to your request in certain limited circumstances, but we’ll tell you why we denied your request in writing within 60 days.

Ask us to correct health and claims records

- You can ask us to correct your health and claims records if you think they are incorrect or incomplete. Ask us how to do this.
- We may say “no” to your request, but we’ll tell you why we denied your request in writing within 60 days.

Request confidential communications

- You can ask us to contact you in a specific way (for example, home or office phone) or to send mail to a different address.
- We will consider all reasonable requests, and we must say “yes” if you tell us that you would be in danger if we do not comply with your request.

Ask us to limit what we use or share

- You can ask us **not** to use or share certain health information for treatment, payment, or our operations.
- We are not required to agree to your request, and we may say “no” if it would affect your care.

Get a list of those with whom we’ve shared information

- You can ask for a list (accounting) of the times we’ve shared your health information for six years prior to the date you ask, whom we shared it with, and why.
- We will include all the disclosures except for those about treatment, payment, and health care operations, and certain other disclosures (such as any you asked us to make). We’ll provide one accounting a year for free but will charge a reasonable, cost-based fee if you ask for another one within 12 months.

Get a copy this privacy notice

- You can ask for a paper copy of this notice at any time, even if you have agreed to receive the notice electronically. We will promptly provide you with a paper copy.

Choose someone to act for you

- If you have given someone medical power of attorney or if someone is your legal guardian, that person can exercise your rights and make choices about your health information.
- We will make sure the person has such authority and can act for you before we take any action.

File a complaint if your feel your rights are violated

- You can complain if you feel we have violated your rights by contacting NBS using the information on page 5.
- You can file a complaint with the U.S. Department of Health and Human Services Office for Civil Rights by sending a letter to 200 Independence Avenue, S.W., Washington D.C. 20201, calling 1-877-696-6775, or visiting www.hhs.gov/ocr/privacy/hipaa/complaints/.
- We will not retaliate against you for filing a complaint.

Your Choices

For certain health information, you can tell us your choices about what we share. If you have a clear preference for how we share your information in the situations described below, let NBS know. Tell us what you want us to do, and we will follow your instructions.

In these cases, you have both the right and choice to tell NBS to:

- Share information with your family, close friends, or others involved in payment for your care
- Share information in a disaster relief situation

If you are not able to tell NBS your preference, for example if you are unconscious, NBS may go ahead and share your information if we believe it is in your best interest. NBS may also share your information when needed to lessen a serious and imminent threat to health or safety.

In these cases, NBS never shares your information unless you give us written permission:

- Marketing purposes
- Sale of your information

Our Uses and Disclosures

How do we typically use or share your health information?

We typically use or share your health information in the following ways.

Help manage the health care treatment you receive

- We can use your health information and share it with professionals who are treating you.

Example: *Your doctor requests information about your plan so that he or she can provide you with treatment.*

Run our organization

- We can use and disclose your information to run our organization and contact you when necessary.

Example: *We use health information about you to develop better services for you.*

Coordinate payment for your health services

- We can use and disclose your health information as we coordinate payment for your services between you and your Plans.

Example: *We share information about you with your dental plan to coordinate payment for your dental work.*

Administer your plan

- We may disclose your health information to your Plan Sponsor for Plan administration.

Example: *Your company contracts with NBS to provide ministerial services, such as claim reimbursement, to your Plans for administration purposes.*

continued on next page

How else can NBS use or share your health information?

We are allowed or required to share your information in other ways—usually in ways that contribute to the public good, such as public health. NBS may have to meet many conditions in the law before we can share your information for these purposes. For more information see:

www.hhs.gov/ocr/privacy/hipaa/understanding/consumers/index.html.

Help with public health and safety issues

- NBS can share health information about you for certain situations such as:
 - Preventing disease
 - Helping with product recalls
 - Reporting adverse reactions to medications
 - Reporting suspected abuse, neglect, or domestic violence
 - Preventing or reducing a serious threat to anyone's health or safety

Comply with the law

- NBS will share information about you if state or federal laws require it, including with the Department of Health and Human Services if it wants to see that NBS is complying with federal privacy law.

Address workers' compensation, law enforcement, and other government requests

- NBS can use or share health information about you:
 - For workers' compensation claims
 - For law enforcement purposes or with a law enforcement official
 - With health oversight agencies for activities authorized by law
 - For special government functions such as the military, national security, and presidential protective services

Respond to lawsuits and legal actions

- NBS can share health information about you in response to a court or administrative order, or in response to a subpoena.

Our Responsibilities

- We are required by law to maintain the privacy and security of your protected information.
- We will let you know promptly if a breach occurs that may have compromised the privacy or security of your information.
- We must follow the duties and privacy practices described in this Notice and give you a copy of it.
- We will not use or share your information other than as described here unless you tell NBS we can in writing. If you tell NBS we can, you may change your mind at any time. Let NBS know in writing if you change your mind.

For more information see: www.hhs.gov/ocr/privacy/hipaa/understanding/consumers/noticepp.html.

Changes to the Terms of this Notice

NBS can change the terms of this Notice, and the changes will apply to all information we have about you. The new notice will be available upon request, or on our web site at

<http://www.nbsbenefits.com/pdfs/HIPAAPrivacyNotice2020.pdf>, and we mail a copy to you.

Effective Date of this Notice: February 1, 2020.

Written Requests and Complaints

Send all written requests and complaints to:

National Benefit Services, LLC
Attn: Matt Gerard, privacy officer
P.O. Box 6980
West Jordan, UT 84048
or mattg@nbsbenefits.com



FSA PLAN

DOCUMENT AUTHORIZATION

Company Information			
Employer Legal Name	Webb County		
EIN	74-6001587	Entity Type	Government
Employer Physical Address	1110 Washington, Suite #204, Laredo, TX 78040		
Phone Number	(956) 523-4143	Fax Number	(956) 523-5012
Primary Contact for Plan Operation	Pedro F. Alfaro		
Contact Email Address	palfaro@webbcountytx.gov		
What is the Company's NAICS Code?	[REDACTED]		
If not known what is the Company's Industry? _____			
Is this a governmental plan? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Withholding Cycle	<input checked="" type="checkbox"/> Every 2 weeks (26) <input checked="" type="checkbox"/> Semi-Monthly (24) <input checked="" type="checkbox"/> Semi-Monthly (21) <input checked="" type="checkbox"/> Semi-Monthly (20)		
Funding Method	<input type="checkbox"/> NBS initiated NACHA pull <input type="checkbox"/> Client initiated ACH <input checked="" type="checkbox"/> Check		

Plan Information			
Plan Name	Webb County Flexible Benefits Plan		
Original Effective Date of Plan	[REDACTED]	Date NBS will begin administration	1/1/2022
Plan Year End date	December 31 st	Plan Number	[REDACTED]
Exclude Part-Time EEs	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No if Yes, Part-Time employees are defined as working less than [REDACTED] hrs/week <i>(should not be less than the part-time requirement for the group medical plan)</i>		
Exclude	<input type="checkbox"/> Union Employees <input type="checkbox"/> Leased Employees <input type="checkbox"/> Nonresident Aliens <input checked="" type="checkbox"/> No Exclusions		
EE Eligibility	First day of the month coinciding with or next following <u>90</u> day(s) of employment		
Do you offer a HRA to Employees	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Do you offer a HSA to Employees	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is there a Limited Purpose Flexible Spending Account associated with the HSA? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>(Limited FSAs only cover Dental and/or vision expenses)</i>			
Does the Limited FSA turn to a Full Flex FSA once the Statutory Deductible is met? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>(Account can be used on all 213 expenses after proof that the statutory deductible has been met)</i>			
Plan Type	<input checked="" type="checkbox"/> FSA Only		
Offer Debit Cards to EEs	<input checked="" type="checkbox"/> Yes - Included		
Max Medical Limit	Medical Max Limit: \$ _____ <input checked="" type="checkbox"/> Current IRS limit		
Employer Contribution	Employer Contribution: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, <input type="checkbox"/> _____% of compensation <input type="checkbox"/> \$ _____ <input type="checkbox"/> Discretionary <input type="checkbox"/> Other Contributions shall be made: <input type="checkbox"/> Pro-rata each pay period <input type="checkbox"/> At beginning of Plan Year Are Contributions convertible to cash? <input type="checkbox"/> Yes <input type="checkbox"/> No Employer Contributions will be made to: <input type="checkbox"/> All accounts <input type="checkbox"/> Health FSA <input type="checkbox"/> Health Savings Account <input type="checkbox"/> Dependent Care FSA		



Insurance Options	<input type="checkbox"/> Cancer <input checked="" type="checkbox"/> Dental <input type="checkbox"/> AD&D <input checked="" type="checkbox"/> Vision <input type="checkbox"/> Disability <input checked="" type="checkbox"/> Group Medical <input type="checkbox"/> Group Term Life <input type="checkbox"/> HSA <input type="checkbox"/> Other
Do you want to reimburse orthodontia expenses in advance from the FSA?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>(if No, then 20% of the cost can be reimbursed at banding and then monthly reimbursements can be made until braces are removed)</i>
Self-Insured Medical Plan?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Are you COBRA Eligible?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>(yes if over 20 employees)</i>
Are you FMLA Eligible?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>(yes if over 50 employees)</i>
Health \$500 Rollover <i>(funds rollover after the run-out period)</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Will the Dependent Care FSA still offer a Grace Period? <input type="checkbox"/> Yes <input type="checkbox"/> No How long:
Grace Period Only <i>(No \$500 Rollover)</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, how long: 75 days <i>(cannot exceed 75 days)</i>
'Run Out' Period	90 days <i>(amount of time participants have to file a claim for expenses incurred during the previous plan year)</i>
Termination 'Run-Out' Period:	90 days For terminated Employees <i>(run-out only applies to terminated employees)</i>
If Applicable - Will NBS be administering the plan's takeover of prior year Takeover- run-out/grace period? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

ADOPTING EMPLOYERS		Are there any separate Employers that have adopted this Flexible Benefits Plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>(if yes, please complete the information below for each employer)</i>			
Name of Adopting Employer	Entity Type	EIN Number	Address	Email Address	Common ownership between Sponsor and Adopting Employer (%)

Below are items that pertain to the provisions in your plan. NBS uses this area to help clarify plan provisions if needed

NBS Notes
Please fill out all highlighted fields. If you would like to note any changes, please leave comments in the Changes/Comments section below.

Upon review of this form, please indicate any changes that may be required. Also, include any comments you may have that will be beneficial during the on-boarding process. You must initial this section below, verifying changes and/or that no changes are required.

Plan Sponsor Comments and/or Changes

Initial Here: _____



FSA Document/Administration Fees	
Plan Document Services	
Plan Document	\$300 <i>Paid by TEB Benefits Group</i>
Plan Amendments	\$150
Administration Services	
Full Flex Plan Administration	\$3.50 / Month / Participant <i>Paid by TEB Benefits Group</i>
Monthly Minimum Fee	\$75 <i>Paid by TEB Benefits Group</i>
FSA benefits are subject to a Claims Paid Funding and must maintain a positive Claim Reserve balance as contained in the Service Agreement. Failure to maintain a positive Claim Reserve balance may result in interruption of claims payment to Plan participants or termination of the Service Agreement.	
Miscellaneous Services	
Annual Reports – Non-discrimination testing	\$200 <i>Paid by TEB Benefits Group</i>
Form 5500 Filing	\$300
Debit Card	Included
Plan Takeover – Administration of Grace Period/Run-out Period	\$250
Extra Hourly Work	\$150 / hour

Email address for billing invoices: _____

Please review the fees listed above, sign below acknowledging receipt of, and agreement to, the fee schedule and authorizing NBS to prepare your plan documents. (Fax number 1-801-823-2207)

The documents that NBS provides have been approved by ERISA attorneys. Should you request significant adjustments to the language in your Plan Document or Summary Plan Description (SPD), our legal counsel will review the request to ensure that the services provided by NBS are consistent with the changes proposed. If approved, NBS will make the changes at an additional cost to you. If extensive legal language changes are required, we recommend that you provide NBS with your own attorney-drafted document for your Plan.

Once NBS receives a copy of the signed Document Authorization and the signed Service Agreement, we will prepare your plan documents and send them to you. The documents need to be signed to make the plan official and in force. You will receive an email so you can electronically sign your documents through AdobeSign.

By signing below, you authorize NBS to prepare the Plan Document per the information included above. **Voluntary changes during Plan Implementation to provisions outside of those listed in the Document Authorization will result in a \$150 reprocessing fee.**

Signature

Print Name

Date