

This Agreement (“Agreement”) is made on \_\_\_\_\_ (the “Effective Date”) by and among County of El Paso (the “Employer”), with principal offices 500 East Overland Avenue, El Paso, TX 79901 and HSA Bank, a division of Webster Bank, N.A. (“Bank”) and Webster Servicing LLC (“Webster Servicing”), a subsidiary of the Bank with principal offices at 605 N 8th St, Sheboygan, WI 53081. The Employer, Bank and Webster Servicing each may be referred to as a “Party” and collectively as the “Parties”.

**WHEREAS**, Bank provides custodial services for health savings accounts (HSAs) and emergency savings accounts (ESAs); and

**WHEREAS**, Webster Servicing provides plan administration and/or benefit services for health flexible spending accounts (FSAs), health reimbursement arrangements and/or retiree reimbursement arrangements (HRAs), adoption flexible spending accounts (AFSAs), health care continuation coverage (COBRA); dependent care flexible spending accounts (DCFSAs), direct billing (DB), lifestyle spending accounts (LSAs), qualified transportation fringe benefit arrangements (TBAs), and tuition reimbursement accounts (TRAs); and

**WHEREAS**, Employer seeks to obtain certain of these services from the Bank and/or Webster Servicing.

**NOW, THEREFORE**, in consideration of the above and the terms set forth below, and intending to be legally bound, the Parties agree as follows:

1. Employer requests that Bank and/or Webster Servicing provide the following services, as appropriate:

- Health Savings Accounts
- Plan Administration Services
  - Health Flexible Spending Accounts
- Benefit Services
  - Dependent Care Flexible Spending Accounts
- Employer requests information relating to specialty services with Bank’s preferred vendor
  - Plan documents (Cafeteria Plans including POPs, Health Reimbursement Arrangements, Wrap Plans)
  - Nondiscrimination testing
- Health Plan Claims Data Exchange

2. This Agreement is comprised of this signature page, the General Terms and Conditions For All Services and all Schedules and Exhibits herein. Additional Exhibits identified by name reflect terms and conditions that apply to each service selected by Employer. All of the Exhibits and Schedules attached to this Agreement are included and made a part of this Agreement. This Agreement supersedes all other agreements for services between the Parties.

Upon mutual agreement of the Parties, Employer may add services, or change options with respect to services, by written amendment to this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the Effective Date by their respective duly authorized representatives.

County of El Paso

HSA Bank, a division of Webster Bank, N.A.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Webster Servicing LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## GENERAL TERMS AND CONDITIONS FOR ALL SERVICES

**I. SERVICES** Bank and Webster Servicing shall perform the services selected by Employer in accordance with the terms and conditions of this Agreement and applicable law. These General Terms and Conditions for All Services shall apply to services described herein that are provided by Bank and Webster Servicing to Employer. Terms set forth in any additional Exhibits and related Schedules apply to the specific services selected by Employer and are in addition to and not instead of these terms and conditions, unless otherwise stated.

## II. TERM AND TERMINATION

**2.1 Term.** The term of this Agreement shall begin on the Effective Date and continue for a period of three (3) years (the "Initial Term"). This Agreement will automatically renew for twelve (12) months at the end of the Initial Term and every twelve (12) months thereafter (each a "Renewal Term"), unless terminated by either Party by written notice provided at least one hundred twenty (120) days prior to the end of the Initial Term or any subsequent Renewal Term. The Initial Term and Renewal Term shall be collectively referred to as the "Term".

### **2.2 Termination for Cause.**

a. Either Party may terminate this Agreement upon sixty (60) days prior written notice to the other stating the effective date of termination upon the bankruptcy, insolvency, dissolution or appointment of a receiver with respect to the other Party.

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

c. Either Party may terminate this Agreement if any law is enacted or interpreted by a court or government regulator that prohibits the continuance of this Agreement.

d. Bank or Webster Servicing may terminate this Agreement with thirty (30) days prior written notice if any monthly administrative fee due by Employer is more than thirty (30) days late.

e. The Bank or Webster Servicing may terminate this Agreement if it is required to do so by the Office of the Comptroller of the Currency.

**2.3 Performance After Termination.** To the extent applicable, when this Agreement is terminated, Bank or Webster Servicing shall have the immediate right to demand and pursue collection of any fees, reimbursements or other amounts that are due and owing to Bank or Webster Servicing as of the date of termination pursuant to the terms of this Agreement.

**2.4 Right of Early Termination for Certain Plan Administration and/or Benefit Services.** If Employer terminates any applicable services as specified in the applicable exhibit(s) prior to the completion of the Initial Term, the Third Party Administrator (as defined in the applicable exhibits) shall be entitled to payment of reasonable compensation for losses upon early termination of this Agreement, including but not limited to recovery of startup costs, legal and related expenses. For avoidance of doubt, the Employer and the Third Party Administrator agree that reasonable compensation for such termination during the first year of the Initial Term shall be equal to twelve (12) months of

fees (based on average fees paid or payable by Employer to the Third Party Administrator during the months preceding termination); reasonable compensation for termination during the second year shall be six (6) months' worth of fees determined in the same manner; and reasonable compensation for termination during the third year shall be three (3) months' worth of fees determined in the same manner.

## **2.5 Performance After Termination for Certain Plan Administration and/or Benefit Services.**

**a. Termination or Ineligibility of Participant.** Upon notice from Employer of termination or ineligibility of a participant in an applicable service as set forth in the applicable exhibit, the Bank will deactivate such participant's Card with respect to any such account as soon as is practical. Should Employer fail to provide such notice in a timely manner resulting in payment of ineligible expenses, Employer will be responsible for all costs incurred for subsequent Card transactions made by the terminated or ineligible participant.

**b. Termination of Agreement.** When this Agreement is terminated, the Third Party Administrator will immediately cease the performance of any further applicable service as set forth in the applicable exhibit to Employer, regardless of when claims are incurred. If requested by Employer, Third Party Administrator agrees to provide post-termination "run-out" services for claims incurred prior to termination, the terms of this Agreement will remain in place during such period. Upon termination of this Agreement or, if later, the end of any run-out period, the Third Party Administrator will cease processing expense reimbursement requests that are in its possession and return to Employer or its designee any unpaid or other pending payment requests and/or any subsequent reimbursement requests.

Within one hundred twenty (120) days after the later of the termination of this Agreement or the applicable run-out period, the Third Party Administrator shall prepare and deliver to the Employer a complete and final accounting and report of the financial status of any applicable service as set forth in the applicable exhibit as of the date of termination, together with all books and records in its possession and control pertaining to the administration of the plan or program, all claim files, and all reports and other paper pertaining to the plan or program.

## **III. INTELLECTUAL PROPERTY RIGHTS**

**3.1 Rights Reserved.** Each Party retains all respective intellectual property rights, including all patent, copyright, trademark rights, and/or service mark rights in any materials, software or processes belonging to it, its subsidiaries, affiliates, or licensors, including but not limited to rights accruing by virtue of applicable federal, state, or common law. Except as provided herein, neither Party grants any other rights or licenses to the other.

**3.2 Logos.** The Parties shall not use any logo, trademark, service mark, trade name, or image of the respective owner (each a "Logo") whether any such Logo is registered or unregistered, or otherwise protected or protectable under state or federal law, in any manner other than as is expressly authorized in writing by an authorized representative of the Logo's owner. Nothing in this Agreement or any subsequent authorization shall confer any right of ownership in any Logo, and neither Party shall make any representation to that effect, or use the Logos in a manner that suggests that such rights are conferred, and the Logos are and shall remain the sole property of the owner.

## **IV. CONFIDENTIAL INFORMATION**

**4.1 Confidential Information.** Each Party (as "Recipient") may have access to, and each Party (as "Owner") may provide to the other Party, information that the Owner regards as confidential or proprietary, or information that a reasonable person would consider confidential (the "Confidential Information"). Confidential Information includes

information of a commercial, personal, proprietary or technical nature and includes the following, whether now in existence or hereafter created: (a) any information of or about the Owner's customers of any nature whatsoever, and specifically including the fact that someone is a customer or prospective customer of the Owner, and all personal or financial information relating to and identified with such persons ("Customer Information"); (b) all information marked "confidential" or similarly marked, or information that the Recipient should, in the exercise of reasonable business judgment, recognize as confidential; (c) all business, financial or technical information of the Owner and any of the Owner's vendors (including account numbers, and software licensed from third parties or owned by the Owner or its affiliates); (d) the Owner's marketing philosophy and objectives, promotions, markets, materials, financial results, technological developments and other similar proprietary information and materials; (e) all information protected by rights embodied in copyrights, whether registered or unregistered (including all derivative works), patents or pending patent applications, "know how", trade secrets and any other intellectual property rights of the Owner or Owner's licensors; (f) information with respect to employees of Bank, Webster Servicing and/or Employer which is non-public, confidential, business related, or proprietary in nature, including names of employees, the employees' positions within Bank, Webster Servicing or Employer, the fact that they are employees of Bank, Webster Servicing or Employer, contact information for employees, personal employee identification numbers, and any other information released to Bank, Webster Servicing or Employer regarding employees in the past and in the future; (g) all notes, memoranda, analyses, reports, compilations, studies and other documents, whether prepared by the Owner, the Recipient or others, which contain or otherwise reflect Confidential Information; and (h) data or other information in any medium specifically relating to employees in their capacity as Depositors or ESA Accountholders, and as related to deposit accounts submitted in furtherance of the HSA or ESA services in this Agreement ("Depositor Information").

As between Bank, Webster Servicing and Employer, Depositor Information is and will be owned exclusively by Bank.

**4.2 Essential Obligation.** Confidential Information must be held in confidence and disclosed only to those employees or agents whose duties reasonably require access to such information in connection with the services. Recipient must protect the Owner's Confidential Information using at least the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, disclosure or duplication (except as required for backup systems) of such Confidential Information as Recipient uses to protect its own Confidential Information of a similar nature. Recipient shall establish and maintain data safeguards against the destruction, loss, alteration of or unauthorized access to Owner's Confidential Information in the possession of Recipient. Recipient must report as soon as practicable but in no more than two (2) business days after any actual or suspected violation of the confidentiality provisions to the Owner to the extent allowed and take all reasonable and further steps as required to prevent, control or remedy any such violation. In the unlikely event that a Party receives Confidential Information as an unintended recipient, both Parties agree to maintain the information as Confidential Information and destroy said Confidential Information. Upon termination of this Agreement and upon request by Owner, Recipient shall return or destroy all Owner Confidential Information in its possession, except for Confidential Information retained in the ordinary course of business, which, if not returned or destroyed, shall be handled in accordance with the terms of this Agreement for as long as Recipient has such Confidential Information.

**4.3 Compelled Disclosure.** If Recipient is required by a court, law (including but not limited to any state open record laws) or governmental agency having proper jurisdiction to disclose any Confidential Information, Recipient must provide notice to the Owner as soon as practicable but in no more than two (2) business days of learning of such requirement, or earlier if such notice is reasonably necessary to enable the Owner to seek an appropriate protective order, unless prohibited by law. If required by law, however, Recipient may disclose the Owner Confidential Information to a governmental agency with proper jurisdiction without notification to the Owner. Upon the request

of a governmental agency with proper jurisdiction (such as the Internal Revenue Service or the United States Department of Labor), a Party may disclose this Agreement and its terms without notification to the other Parties.

**4.4 Disclosure to Third Parties.** If disclosure of Confidential Information to non-governmental, non-judicial third parties is required or allowed, or occurs under, or pursuant to this Agreement and the services provided hereunder, Recipient must ensure that any third party, including any third party acting on its behalf, such as a third-party who may request data security questionnaires and/or certificates from Bank, have express obligations of confidentiality and non-disclosure substantially similar to Recipient's obligations under this Agreement. Recipient will be jointly and severally liable for any and all direct and foreseeable damages arising out of such non-governmental, non-judicial third parties' disclosure of Confidential Information.

**4.5 Exclusions.** Except for Customer Information, the term Confidential Information excludes any portion of such information that Recipient can establish to have been:

- a. Publicly known without breach of this Agreement;
- b. Known by Recipient without any obligation of confidentiality, prior to disclosure of such Confidential Information;
- c. Received in good faith from a third party source that to Recipient's reasonable knowledge rightfully disclosed such information; or
- d. Developed independently by Recipient without reference to the Owner's Confidential Information.

**4.6 Remedies.** If Recipient or any of its representatives or agents breaches their obligations with respect to Confidential Information of the other Party, irreparable injury may result to the Owner or third parties entrusting Confidential Information to the Owner. Therefore, the Owner's remedies at law may be inadequate and the Owner shall be entitled to seek an injunction to restrain any continuing breach. Both Parties also waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief. Notwithstanding any limitation on Recipient's liability, the Owner shall further be entitled to any other rights and remedies that it may have at law or in equity.

**V. DEBIT CARD ("Card").** The following additional provisions shall apply with respect to the Card services to the extent Cards are part of the services provided.

- a. Participating employees and eligible dependents, if applicable, will receive a Card without a separate fee.
- b. Cards are designed to be compliant with the Inventory Information Approval System (IIAS), a point-of-sale technology that permits automatic substantiation of claims for pharmacy expenses.
- c. Bank agrees to cancel, as soon as is practical, access to an employee's Card when a Card is reported as lost or stolen.
- d. Bank will make available to the Employer, for distribution to participating employees, information as to the proper use of the Card. Participating employees will be required to agree to Card terms and conditions as a condition to using the Card.
- e. Employer agrees to notify Bank or Webster Servicing immediately upon suspicion or confirmation of inappropriate or fraudulent Card use. If Bank or Webster Servicing suspects fraud or suspicious activity regarding

a participating employee, Employer agrees to cooperate with Bank or Webster Servicing in its investigation and to respond to requests for additional information as soon as practicable but in no more than two (2) business days of Bank and/or Webster Servicing's request. Bank or Webster Servicing reserves the right to terminate access to the Card.

**VI. INDEMNIFICATION** Bank or Webster Servicing will indemnify, defend and hold harmless Employer, its directors, officers, employees and agents, from and against any damages, losses, liabilities, judgments and expenses arising out of third party claims, including but not limited to reasonable attorneys' fees, and court costs arising out of Bank's or Webster Servicing's breach of this Agreement breach of applicable laws, gross negligence, willful misconduct, criminal conduct, reckless acts or fraud.

Employer will indemnify, defend and hold harmless Bank and Webster Servicing, its directors, officers, employees and agents, from and against any damages, losses, liabilities, judgments and expenses arising out of third party claims, including but not limited to reasonable attorneys' fees, and court costs arising out of Employer's breach of this Agreement, breach of applicable laws, gross negligence, willful misconduct, criminal conduct, reckless acts or fraud.

Further, Employer agrees to defend, indemnify, and hold harmless Bank, its trustees, officers, employees, and agents from and against any and all claims arising out of or resulting from any unauthorized access into Bank's system through Employer or Platform Provider in the SSO process, as well as any and all claims arising out of or resulting from Platform Provider's or Employer's use of Data not as authorized as set forth herein, Platform Provider's or Employer's failure to obtain the required authorizations for Bank to share Data with Platform Provider and/or Employer, and/or any unauthorized access to display of the Data caused by Employer or Platform Provider.

**VII. LIMITATION OF LIABILITY**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, ASSIGNS, OR EMPLOYEES, FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO CLAIMS MADE UNDER OR PURSUANT TO THIS AGREEMENT EVEN IF THE PARTY OR PARTIES HAVE BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

EXCEPT FOR A PARTY'S INDEMNIFICATION LIABILITY PURSUANT TO SECTION VI HEREIN, THE MAXIMUM TOTAL LIABILITY OF ONE PARTY TO ANOTHER SHALL NOT EXCEED TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00).

EXCEPT FOR BANK'S OR WEBSTER SERVICING'S DUTIES WITH RESPECT TO THE SERVICES THAT ARE EXPRESSLY PROVIDED IN THIS AGREEMENT OR SUBSEQUENTLY AGREED TO IN WRITING BY BANK AND WEBSTER SERVICING AND THE EMPLOYER, BANK AND WEBSTER SERVICING SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND EMPLOYER'S USE OF BANK OR WEBSTER SERVICING SERVICES UNDER THIS AGREEMENT IS AT ITS OWN RISK. BANK AND WEBSTER SERVICING DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

AND FURTHER, WITH REGARD TO EMPLOYER, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO CLAIMS ARISING OUT OF ANY UNAUTHORIZED ACCESS INTO BANK'S SYSTEM THROUGH EMPLOYER OR PLATFORM PROVIDER IN THE SSO PROCESS, NOR SHALL THEY APPLY TO PLATFORM PROVIDER'S OR EMPLOYER'S USE OF DATA NOT AS SET FORTH HEREIN, EMPLOYER'S OR PLATFORM PROVIDER'S FAILURE TO OBTAIN THE REQUIRED AUTHORIZATIONS FOR BANK TO SHARE DATA WITH PLATFORM PROVIDER AND/OR EMPLOYER, AND/OR EMPLOYER'S OR PLATFORM PROVIDER'S ACTS OR OMISSIONS RESULTING IN ANY UNAUTHORIZED ACCESS TO OR DISPLAY OF THE DATA.

**VIII. REPORTING AND COMMUNICATIONS** Employer will have access to a Bank web portal. The web portal supports daily, weekly and/or monthly reporting of services. Employees will have online and mobile access to all accounts twenty-four hours a day seven days a week (24/7), and periodic statements are available online.

**IX. MISCELLANEOUS**

**9.1 Governing Laws.** The laws of the State of Connecticut shall govern this Agreement, excluding any applicable conflict of law provisions, and to the extent they are not inconsistent with or preempted by ERISA, the Internal Revenue Code (the “Code”), the Affordable Care Act (the “ACA”) or any other applicable federal law.

EMPLOYER AND BANK AND WEBSTER SERVICING EACH CONSENT TO WAIVING THEIR RIGHT TO A JURY TRIAL. EMPLOYER UNDERSTANDS THAT THIS CONSENT MEANS THAT EMPLOYER MAY NOT BE ENTITLED TO A TRIAL BY JURY, IN CONNECTION WITH ANY LITIGATION RELATING TO THIS AGREEMENT.

**9.2 Binding Agreements.** This Agreement, including any Exhibits and Schedules attached, constitutes the entire contract between Bank and Webster Servicing and Employer and no modification or amendment shall be valid unless agreed to in writing by both Parties. This document may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall be considered one and the same instrument.

**9.3 Authority.** Employer and Bank and Webster Servicing each represents to the other that it has taken all necessary corporate action to authorize the execution and delivery of this Agreement. This Agreement, including all Exhibits and Schedules, is accepted and agreed to by the Parties as of the Effective Date.

**9.4 Notices.** Except for invoices and billing-related communications or notices of fee changes, which may be sent by email, any notices required or permitted to be given by one Party to the other under this Agreement shall be deemed given when: (a) hand delivered; (b) sent by first class or certified, postage prepaid United States Mail; or (c) sent by overnight courier sent to the address given above; and if to Bank and Webster Servicing to the attention of Charles Wilkins, Executive Vice President; and if to Employer to the attention and address of the person shown on the signature block. In addition, for notices to Bank and Webster Servicing, a mandatory copy, but such copy shall not be sufficient in itself to constitute notice, shall be sent to:

Webster Bank, National Association  
200 Elm Street  
Stamford, CT 06902  
Attn: General Counsel

**9.5 Assignment.** Either Party may assign this Agreement to any subsidiary or affiliate under its control, or as part of the sale of any substantial portion of its assets, or pursuant to any merger, consolidation or other reorganization, without the other Party’s prior written consent. Except as so provided, neither Party may assign its rights and responsibilities under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. An assignee of either Party, if authorized hereunder, shall have all of the rights and obligations of the assigning Party set forth in this Agreement.

**9.6 Waiver.** If either Party fails to enforce any right or remedy under this Agreement, such failure is not a waiver of the right or remedy for any other breach or failure by the other Party.

**9.7 Severability.** If any provision of this Agreement is determined by a court to be unenforceable or invalid, such determination shall not affect any other provision, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein.

**9.8 Force Majeure Event.** A “Force Majeure Event” means any act or event, whether foreseen or unforeseen, that: (a) prevents a Party (the “Nonperforming Party”), in whole or in part, from performing its obligations under this Agreement; (b) is beyond the commercially reasonable control of and not the fault of the Nonperforming Party; and (c) the Nonperforming Party has been unable to avoid or overcome the act or event by the exercise of due diligence. A Force Majeure Event includes, but is not limited to, epidemic, pandemic any natural disaster (such as earthquakes or floods), emergency conditions (such as war, riot, fire, theft or labor dispute or difficulties), legal constraint or governmental action or inaction, breakdown or failure of a Party’s computer, transmission or communication facilities and equipment of third parties, breakdown of any private or common carrier communication or transmission facilities, any time-sharing supplier and any mail or courier service. If any Party is delayed or prevented from fulfilling its obligations under this Agreement by a Force Majeure Event, said Party will not be liable under this Agreement for said delay or failure.

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

**9.10 No Third Party Beneficiaries.** Except as expressly provided herein, this Agreement is made and entered into for the sole protection and benefit of the Parties hereto. Nothing herein, express or implied, is intended to or shall be construed to confer upon or give to any person, firm, corporation or legal entity other than the Parties and their affiliates any interest, rights, remedies or other benefits with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

**9.11 Taxes.** To the extent that the services to be provided are subject to any sales, use, excise, personal property or any other taxes, payment of such taxes shall be the sole responsibility of Employer. Income tax due on income received by Bank and Webster Servicing from Employer pursuant to this Agreement shall be the responsibility of Bank and Webster Servicing. If Employer is required to pay any taxes based on this Section 9.11, Employer shall pay such taxes with no reduction or offset in the amounts payable to Bank or Webster Servicing hereunder.

**9.12 Schedules.** Employer agrees to the Electronic File Schedule and the Security Procedures Schedule as it relates to the exchange of enrollment/eligibility and contribution/payroll data submission by the Employer or its authorized designee.

Employer is strictly responsible to establish and maintain procedures to safeguard against unauthorized transmissions. Employer warrants that no individual will be allowed to load files in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of and any passwords and codes. If Employer believes or suspects that any such information or instructions have been known or accessed, disclosed, or used by unauthorized persons, Employer agrees to notify Bank immediately followed by written confirmation. The occurrence of unauthorized access will not affect any submissions made in good faith by Bank prior to receipt of such notification and within a reasonable time period to prevent unauthorized transmissions. If a transmission is received by Bank that purports to have been transmitted or authorized by Employer, it will be deemed effective as Employer's transmission and Employer shall be responsible to Bank for submissions sent and that were not authorized by Employer, provided Bank accepted the entry in good faith.

**9.13 Information.** The Parties agree that all information provided to one Party by another Party or any other person or entity (other than the receiving Party) on behalf of the other Party pursuant to any service agreement or other agreement or arrangement with such Party with respect to the services provided hereunder shall be true, accurate, and complete (including the absence of any omissions which, in the context, would be misleading), and that all Parties may rely on such information in performing the services hereunder. Employer represents and warrants that all information provided by Employer to Bank and/or Webster Servicing as part of the services in this Agreement shall be collected and processed in accordance with notice, consent, and other requirements of applicable law.

**9.14 Audit.** Upon reasonable notice to Employer, the Bank and Webster Servicing shall have the right to perform an audit, at its expense, for the purpose of determining Employer's compliance with this Agreement.

**9.15 Survival.** The provisions of Sections 2.3, III, IV, VI, VII, 9.1, 9.2, 9.4, 9.5, 9.6, 9.7, 9.9-9.14, and X of the General Terms and Conditions For All Services shall survive the termination of this Agreement.

**9.16 Notice of Litigation.** Employer shall notify Bank and Webster Servicing promptly of any summons, complaint, or other communication concerning threatened litigation and any inquiry by any governmental agency that is related to the services provided directly to Employer under this Agreement, unless such notification would be a violation of applicable law.

**X. MALWARE AND MALICIOUS CODE** Employer represents, warrants, and covenants that endpoint security controls shall be implemented to detect and prevent malware, malicious code, and unauthorized execution of code. Employer further represents, warrants, and covenants that antivirus software shall be installed on all servers and endpoints and controls are maintained and updated regularly to ensure signatures and definitions are current. Employer shall indemnify, defend, and hold harmless Bank from and against any damages, losses, liabilities, judgments and expenses including but not limited to reasonable attorneys' fees, court costs, and other damages and expenses arising out of for any malware, malicious code, unauthorized execution of code, and/or ransomware attacks originating from Employer.

**XI. PLATFORM PROVIDER SINGLE-SIGN ON (SSO)** Employer has entered into an agreement with a third-party benefit administration and technology services provider ("Platform Provider"). Employer shall provide Bank with the identity of its Platform Provider and appropriate point of contact. Employer authorizes and directs Bank to facilitate Employer's employees' access to their respective accounts through a single sign-on from the Platform Provider's website to the Bank's website (the "SSO"). Employer acknowledges and agrees that Bank may decline to implement or may discontinue the SSO in its sole discretion, and that the SSO is contingent upon Employer's and Platform Provider's agreement on legal and technical terms of the SSO. Employer further acknowledges and agrees that Bank shall not be responsible and or liable for any errors and omissions and or failure of Platform Provider to perform Platform Provider's services or the SSO functionality. Employer shall provide Bank with one hundred twenty (120) days prior written notice of the expiration or termination of Employer's agreement with Platform Provider.

**XII. DATA SHARING** Employer has entered into an agreement with a third-party benefit administration and technology services provider ("Platform Provider") for data sharing services whereby Bank shall provide to Platform Provider HSA, plan administration services, and/or other benefit services, where applicable, current balance (the "Data") to support the sharing of Data for each Depositor and participant who requests Data through the Platform Provider's services. For the avoidance of doubt only account balance information shall be accessed. Employer shall provide Bank with the identity of its Platform Provider and appropriate point of contact. Employer shall obtain the necessary authorization, either through Employer or through Platform Provider, from Depositor for Bank to provide to Platform

Provider the Depositor's HSA balance. Employer hereby authorizes Bank to provide to Platform Provider the participant's plan administration services and/or benefit services balance information, as may be applicable to the participant.

Employer shall ensure that neither Employer nor Platform Provider will use the Data for any purpose other than as set forth in this Agreement. Employer shall be responsible for any use of the Data not solely for the purposes described herein and for any Data shared without properly obtained authorizations from Depositors. Bank reserves the right to suspend its provision of Data to Platform Provider without notice if, in its sole discretion, that continuing to provide Data to Platform Provider would expose Bank to legal, security, or reputational risk that would be of such severity as to warrant such immediate suspension. Employer shall provide Bank with one hundred twenty (120) days prior written notice of the expiration or termination of Employer's agreement with Platform Provider. Bank does not guarantee the accuracy of the Data through Platform Provider's services.

### **XIII. CERTAIN PLAN ADMINISTRATION SERVICES AND BENEFIT SERVICES STANDARD PROVISIONS**

**13.1 Forms.** Employer shall use administrative forms and/or user guide information provided by the Third Party Administrator. All forms and user guide information provided by the Third Party Administrator shall be subject to periodic updates and revisions, and Employer agrees to use the most current versions. The Third Party Administrator will provide instructions and forms for the processing of benefit claims under the applicable Plan, DCFSA, TBA, TRA, LSA and/or AFSA. Except where benefits are provided through Bank issued debit cards, all participants shall be required to apply for benefits using forms provided by the Third Party Administrator. The Third Party Administrator will provide all forms in electronic format to Employer and participants. Paper-based forms can also be made available upon request through the Third Party Administrator's call center.

**13.2 Forfeited Funds.** As it relates to applicable services as specified in the applicable exhibit(s), any unclaimed amounts, including any previous reimbursement checks or other similar methods of payment that have been issued but remain unendorsed, which remain unpaid after one hundred and eighty (180) days will be returned to the Employer, minus any necessary fees and expenses (such as check cancellation fees) that are owing to the Third Party Administrator pursuant to this Agreement.

**13.3 Nondiscrimination Testing.** Employer will ensure that its Plan, AFSA and/or DCFSA meets nondiscrimination requirements under Sections 125, 129 and 105(h) of the Code, as applicable. The Employer may request a referral from the Third Party Administrator to a third party vendor who will assist the Employer with nondiscrimination testing for a separate fee. The Third Party Administrator will provide information it maintains that is requested by the Employer to conduct nondiscrimination testing.

**13.4 Employer Confidential Information.** The Third Party Administrator will maintain archival records for seven (7) years during the Term of this Agreement. Following the Agreement's termination and with advance written notice by Employer, the Third Party Administrator will cooperate with Employer (or Employer's subsequent service provider) to affect an orderly transition of services covered by the Agreement. The Third Party Administrator is not required to destroy, erase or modify any archival records that it maintains in the normal course of its business.

**13.5 Third Party Administrator not Responsible for Benefits.** The Third Party Administrator shall not be liable or use its funds for the payment of benefits under the Plan, DCFSA, TBA, TRA, LSA, and/or AFSA including, without limitation, where sought as damages in an action against the Employer, the Third Party Administrator or the Plan, DCFSA, TBA, TRA, LSA and/or AFSA. The Third Party Administrator does not insure or underwrite the Employer's liability to provide benefits under the Plan, DCFSA, TBA, TRA, LSA and/or AFSA and the Employer shall have the sole responsibility and liability for payment of all benefits under the Plan, DCFSA, TBA, TRA, LSA, and/or AFSA.

**13.6 Amendments.** The Employer shall provide the Third Party Administrator with a copy of any contemplated amendment to the Plan, DCFS, TBA, TRA, LSA, and/or AFSA no less than thirty (30) days prior to the anticipated amendment effective date. However, under no circumstances should the Employer adopt any amendment that would alter the Third Party Administrator's duties hereunder without prior written consent of the Third Party Administrator.

**13.7 Employee Fraud.** The Employer is solely responsible for making the Plan, DCFS, TBA, TRA, LSA, and/or AFSA whole if fraud is committed against it. The Third Party Administrator shall not be responsible for pursuing or correcting any such actions unless committed by Third Party Administrator.

**13.8 Reliance by the Third Party Administrator.** Employer has authorized and instructed Third Party Administrator in this Agreement to implement its standard administrative procedures to provide services in accordance with this Agreement. The Third Party Administrator shall be fully protected in relying upon representations by Employer set forth in this Agreement and communications made by or on behalf of Employer in effecting its obligations under this Agreement. Employer and the Third Party Administrator agree that if Employer provides the Third Party Administrator with specific written instructions (in a form acceptable to the Third Party Administrator) to provide services in a manner other than in accordance with the Third Party Administrator's standard procedures, the Third Party Administrator may (but need not) comply with Employer's written instructions, provided that, to the extent that the Third Party Administrator complies with such instructions, Employer and not the Third Party Administrator shall be solely responsible for the Third Party Administrator's actions so taken, and Employer agrees to indemnify and hold the Third Party Administrator harmless (including reasonable attorney's fees and costs) and expressly releases all claims against the Third Party Administrator in connection with any third party claim or cause of action, which results from or in connection with the Third Party Administrator following Employer's written instructions.

**13.9 Participant Counts.** Participant or employee counts for billing purposes are determined on the first business day of each month.

**XIV. TRANSFER INCENTIVES** The Bank has agreed to provide a transfer incentive and contribute into eligible employees HSA accounts twenty-five (\$25.00) dollars for every health savings account that the Bank successfully opens as part of the trustee-to-trustee transfer with Bank under this Agreement with a minimum amount transferred of five hundred (\$500.00) dollars within ninety (90) days of the plan start date (the "Total Transfer Incentive Amount").

## **ELECTRONIC FILE SCHEDULE**

If applicable, in conducting electronic file transfer (either directly or through its vendor or agent), Employer agrees to submit a test data file for validation by Bank prior to submitting any actual electronic data files. Bank will not accept any actual electronic data files until the test file is validated and certified to meet Bank specifications. In the event such certification has not occurred, Employer may submit, and Bank may accept, completed account applications in paper or direct prospective Depositors to an Internet-based online file solution provided by Bank at [www.hsabank.com](http://www.hsabank.com) or a mutually agreed upon alternative. Any costs to Employer shall be agreed upon before commencement of such creation.

Employer shall transmit all files to Bank through the Bank's defined file submission methods subject to the security procedures described below. Employer will conform all file submissions to the format, content and specifications as provided by Bank to Employer, which may be amended by Bank from time to time.

Security procedure requirements ("Security Procedures") have been offered to the Employer by the Bank with respect to the files transmitted by the Employer to the Bank and the Employer has reviewed and accepted same. Employer shall comply with the Security Procedures described below. The Security Procedures have been agreed upon by the Employer based upon: (a) communications with the Bank regarding the Employer's wishes; (b) the circumstances of the Employer made known to the Bank; (c) alternative security procedures offered to the Employer; and (d) security procedures in general used by similarly situated companies and receiving banks. As a result of and based upon the foregoing, Employer warrants that no individual will be allowed to transmit files in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, codes, security devices and related instructions in connection with the Security Procedures.

The Employer, or Employer's authorized designee, shall make good faith efforts to timely respond to any Bank requests or inquiries relating to SFTP implementation and testing. In the event that the Employer, or Employer's authorized designee, fails to provide a timely response to the Bank, the Bank, in its sole discretion may terminate the SFTP implementation project. If after termination of the SFTP implementation project, the Employer desires to reinstate the SFTP implementation project, HSA Bank will review the request and if the parties mutually agree to move forward again the Employer's position in Bank's SFTP implementation project queue may reset.

Bank may disable the SFTP connection in its sole discretion if Employer fails to utilize SFTP connection for at least thirteen (13) consecutive months. If Employer fails to contact Bank within thirty (30) days after Bank disables the SFTP connection, the connection may be terminated by Bank in its sole discretion.

Bank reserves the right to terminate and/or disable Employer's SFTP connection if, in its sole discretion, such action is required due to Employer's or Sender's misuse of SFTP.

## SECURITY PROCEDURES SCHEDULE

Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been sent by Employer, or its authorized designee, and any such communication shall be deemed to have been sent by such person. It is the responsibility of the Employer to notify Bank in writing of any changes to those individuals designated as the authorized representative for the Employer.

### PC/Internet File Transmission Through Secure FTP ("SFTP")

- The Employer's authorized representative ("Sender") will access the Bank SFTP site for SFTP file delivery via the Bank's authorized method as set forth below. Bank will implement on the Bank's SFTP Server.
  - Utilize Sender's private SSH key
- **Encryption:** Encryption is a method of encoding Employer's information so that it cannot be read by others who do not have authorization to decode that information. The information Sender enters is encrypted by its web browser and is only decrypted (decoded) when it reaches our web server. The file will be encrypted with Bank's PGP Public Key, which will be provided to Employer for this express purpose.
- The Bank's firewall will filter the IP Address, only accepting files from a preauthorized and verified Sender's IP address. Files originating from any other IP address will be rejected.
- The information provided in the file will be relied upon by Bank for verification of the totals contained in the transmission as it relates to contribution files.
- Bank will verify that the file totals agree with the information provided in the file header as it relates to contribution files. In the event of a discrepancy, Bank will notify Employer and/or Sender, where applicable, by rejecting the file and sending an e-mail to the Employer and/or Sender. Bank will only process verified files; any rejected files must be re-sent with correct information before they will be processed.
- The Employer is solely responsible for the accurate creation, modification, and deletion of the account information maintained and used for file transfer.
- The Employer and Sender is responsible for compliance with all security procedures.
- The Bank shall be entitled to rely on any written notice believed by it in good faith to be signed by one of the authorized representatives of the Employer or Sender.

**CUSTODIAL SERVICES EXHIBIT  
FOR HEALTH SAVINGS ACCOUNTS**

Bank will serve as custodian of HSAs established by Employer for its employees. Employer will contribute and/or permit employee contributions to HSAs established at Bank.

**I. DEFINITIONS**

**1.1** "Account" means an HSA established at Bank.

**1.2** "Account Documents" means the Bank's Deposit Account Agreement and Disclosures for Health Savings Accounts, as amended by Bank from time to time, and such other electronic and paper documents and instruments as the Bank may require an individual (or the Employer acting as agent for the individual) to execute and deliver in order to establish an HSA for such individual.

**1.3** "Depositor" means an individual who establishes an HSA with Bank while employed by Employer.

**II. EMPLOYEE ENROLLMENT**

**2.1 Establishment of HSAs.** Employer or its authorized designee will obtain authority in the open enrollment process to establish HSAs for each eligible employee. Employer will provide, upon request by the Bank, the following:

a. The distribution, collection and transfer of Depositors' information, either directly or through Employer's authorized designee, in electronic form.

b. As mutually agreed, upon by the Parties, in conducting electronic enrollment data (either directly or through Employer's authorized designee), employer may load applicable enrollment data based on applicable services to Bank which may include the Bank's SECURE Employer Administration Portal, SFTP or Group Online Enrollment. Employer or its authorized designee will conform all file submissions to the format, content, and specifications as provided by Bank to Employer, which may be amended by Bank from time to time.

The Parties must mutually agree to the SFTP enrollment file method. In the event that the Parties agree to exchange enrollment files via SFTP, the Employer agrees to the terms as set forth in the Electronic File Schedule and the Security Procedures Schedule.

The Bank need not establish an Account for any employee until the Bank has received complete executed copies of all Account Documents required by it, and has concluded, in its sole discretion, that it wishes to accept the employee and establish the Account. The Bank shall open and maintain the HSAs subject to the Account Documents between the employee and the Bank.

Bank will obtain electronic authorization from each employee authorizing a custodian-to-custodian transfer of the employees' accounts from the prior custodian to Bank in connection with the bulk transfer in. Unless mutually agreed upon by the Party's otherwise, the Bank will provide, and Employer will distribute the required link and access code to Bank's electronic consent authorization webpage by January 1, 2025. Employer will send a minimum of three (3) reminder emails to its employees to complete the electronic consent prior to the Closed Date. Unless mutually agreed upon by the Party's otherwise, Employer's employees will have until January 31, 2025 (the "Closed Date") to provide the required authorization for a custodian-to-custodian transfer. No later than five (5) business days after the Closed

Date, the Bank will provide to the Employer authenticated records including the name and unique ID (SSN) of each Depositor.

At Bank's sole discretion, Bank will assist with employee enrollment meetings for no additional fee.

**2.2 Former employees.** This Agreement shall not apply to any person whose Account is administered by the Bank and subsequently terminates their employment with the Employer.

**2.3 High Deductible Health Plan.** If employees are enrolled in a qualified High Deductible Health Plan ("HDHP") sponsored by Employer, Employer shall ensure that the HDHP satisfies the applicable requirements of Section 223 of the Code, and that such employees are not enrolled in employer-sponsored coverage that is disqualifying coverage. Employer shall not: (a) limit the ability of eligible individuals to move their funds to another HSA beyond restrictions imposed by the Code; (b) impose conditions on utilization of HSA funds beyond those permitted under the Code; (c) make or influence the investment decisions with respect to funds contributed to an HSA; (d) represent that the HSAs are an employee welfare benefit plan established or maintained by Employer; or (e) receive any payment or compensation in connection with an HSA.

**2.4 Compliance with Laws.** Except to the extent expressly delegated to Bank under this Agreement, Employer shall assume sole responsibility for compliance with applicable law, including but not limited to wage reporting, employment tax obligations, contribution requirements under Section 4980G of the Internal Revenue Code (or if contributions are made through a Section 125 cafeteria plan, compliance with the requirements of Section 125 and the regulations thereunder), and if an HSA arrangement is determined to be subject to ERISA, the obligations thereunder. The Employer represents and warrants that its HSA plan is not subject to ERISA.

### III. EMPLOYER CONTRIBUTIONS TO HSAs

Employer or its authorized designee shall contribute to HSAs using the following method (to be agreed upon in advance):

**3.1 Employer transmits funds via ACH/Wire.** Employer shall transmit all funds via wire transfer or ACH through a third party to a designated clearing account maintained at Bank (the "Employer Clearing Account") Employer, or its authorized designee, shall provide an electronic contribution file via Secure File Transfer Protocol to Bank on how to disburse funds from the Employer Clearing Account to the HSAs of its employees. The Bank will rely on such entries and is authorized to transfer funds from the Employer Clearing Account to each individual Depositor's Account by means of an ongoing contribution file referencing the individual Depositor's Account at the Bank. Employer will conform all file submissions to the format, content and specifications provided by Bank as may be amended from time to time.

### IV. FEES AND PAYMENT

**4.1 Fees for Bank Services.** The monthly maintenance Account fee for each Depositor will be seventy-five (\$0.75) cents, during the Initial Term and shall be subject to change after the Initial Term, with sixty (60) days prior written notice to the Employer and Depositor, as applicable; and in compliance with applicable banking law.

Behavioral fees charged to each Depositor during terms of this Agreement shall be as follows:

- a. Printed Statement Fee: \$1.50 (upon Depositor's request for printed statements only); and
- b. Account Closure Fee: \$25.00.

The minimum balance for applicable fee waiver is determined by the Bank as set forth in and may be modified at the discretion of Bank from time to time.

**4.2 Responsibility for Fees.** If Employer elects to pay the monthly maintenance fees on behalf of Depositors, Bank will send Employer a monthly invoice for fees payable for the prior month by email/mail no earlier than the 2nd day of each month. Employer shall pay all fees for the Depositors, with the exception of those who maintain a balance sufficient to qualify for a fee waiver. The minimum balance for applicable fee waiver is determined by the Bank as set forth in the fee schedule and may be modified at the discretion of Bank from time to time. Employer shall either set up a clearing account with Bank or allow Bank to pull monies from an Employer designated account for the purpose of paying such fees. The Employer shall send to the clearing account or maintain in the Employer designated account a sufficient amount of available funds no later than the 23rd day of each month in order to cover such fees. Employer may send the funds via wire or other method, but agrees to send said monies in a method whereby all funds shall be good and available as of the 24th day of each month. Employer authorizes Bank to withdraw money from the clearing account and/or the Employer designated account to pay such fees on the 25th day of each month. These monies will be payment for the amount shown on the invoice for the prior month. Employer agrees to inform Bank within thirty (30) days from the receipt of the invoice if any fee is disputed.

Employer agrees that failure to pay any such fees is a material breach of this Agreement. If good, available and sufficient monies to cover all fees are not available on the 25th day of the month in which payment is due, then Bank may cease invoicing Employer, and contact the respective Depositors to notify them that the fees for Bank services will be collected directly by Bank from the Depositor's account within thirty (30) days. Bank may close the accounts of Depositors with insufficient funds to pay fees. Employer remains responsible for any unpaid fees.

#### **V. LIMITATION OF LIABILITY**

BANK SHALL NOT BE LIABLE HEREUNDER TO EMPLOYER OR ANY OF ITS OFFICERS, DIRECTORS, AGENTS, ASSIGNS, OR EMPLOYEES, FOR ANY BANK SERVICES PROVIDED TO DEPOSITORS OR OTHER INDIVIDUALS OWNING ACCOUNTS AT THE BANK. RIGHTS OF DEPOSITORS ARE GOVERNED BY THE ACCOUNT DOCUMENTS.

#### **VI. TERMINATION OF HSA CUSTODIAL AGREEMENT**

Termination of this Agreement does not terminate any relationship between Bank and employees of Employer for HSA custodial services.

#### **VII. GRAMM-LEACH-BLILEY ACT AND DEPOSITOR INFORMATION**

The Gramm-Leach-Bliley Act requires financial institutions to create safeguards for customer records and information, and to include these requirements in contracts with third parties that maintain, process, or otherwise access to customer records and information (the "Safeguarding Objectives").

Bank represents and agrees that it has and will maintain in place commercially reasonable precautions to safeguard the confidentiality, security and integrity of Confidential Information in a manner designed to meet the Safeguarding Objectives set forth in the Gramm-Leach-Bliley Act issued by the Office of the Comptroller of the Currency ("OCC") (12 CFR Part 40) and the Federal Trade Commission ("FTC") (16 CFR Part 313). These precautions shall include, as applicable: (a) contractual restrictions on access to the information by vendors and other third parties; (b) intrusion detection systems on all information systems of Bank maintained or controlled by Bank; and (c) notification procedures for notifying Employer promptly in the event a security or information breach or disclosure is detected or suspected, as well as other response programs when there is a suspected or detected unauthorized disclosure, access or attempted access of customer records and information. These precautions shall include, as appropriate: (i) access controls to systems,

including controls to identify and permit access only to authorized individuals and controls to prevent access to customer records and information through fraudulent means; (ii) employee controls and training; (iii) physical access restrictions at locations where customer records and information is located; (iv) encryption of electronic customer records and information when appropriate or legally required; and (v) a disaster recovery plan as appropriate to protect against loss or damage to customer records and information due to potential hazards such as fire or water damage or technological failures.

## PLAN ADMINISTRATION SERVICES EXHIBIT

### FSA AND HRAs

I. **PLAN ADMINISTRATION SERVICES** Services provided by Webster Servicing LLC ("Third Party Administrator") in the administration of Employer's FSA or HRA (each, a "Plan") shall include the following:

**1.1 Plan Administration.** The Third Party Administrator shall assist the Employer in the administration of the Plan(s) selected by Employer pursuant to Employer/Plan direction.

**1.2 Plan Documents.** Employer shall be responsible for all Plan documents, including but not limited to a copy of the Summary Plan Descriptions ("SPDs"), and for providing all necessary information to the Third Party Administrator for the Third Party Administrator's proper administration of the Plan. The Employer may request a referral by the Third Party Administrator to a third party vendor who will assist the Employer in the creation of Employer's Plan documents for a separate fee. It is the Employer's responsibility to ensure that the Plan documents are complete, comply with applicable law, and are timely adopted. The Third Party Administrator shall not have any legal responsibility with respect to Employer's Plan documents.

**1.3 Record-Keeping.** The Third Party Administrator shall assist the Employer in the development and maintenance of administrative and record-keeping systems for the Plan.

**1.4 Data Privacy Provisions.** The Employer and Third Party Administrator agree to the terms and conditions as set forth in the Business Associate Agreement Exhibit in the event Protected Health Information (as such term is defined in the HIPAA Privacy Rule at 45 CFR §160.103 is created, accessed or received by the Third Party Administrator in the course of fulfilling Employer's obligations under this Agreement. A separate Business Associate Agreement Exhibit is attached here to as an exhibit is and incorporated into this Agreement.

**1.5 Claims and Appeals.** The Third Party Administrator may rely on information from the Employer with regard to a participant's elections. Claims received from participants by the Third Party Administrator will be processed on a daily basis Monday through Friday, during regular business hours, excluding national holidays. The Third Party Administrator shall have no power or authority to waive or modify any terms and conditions of the Plan. The following procedures will apply with respect to any health FSA or HRA:

a. The Third Party Administrator shall make the initial claim determination whether to grant or deny each participant's claim for benefits in accordance with the Plan and any reasonable rules established by the Third Party Administrator. The Third Party Administrator will provide automatic email notification to participants who request this service when manual claims are received and reimbursement is sent.

b. If the Third Party Administrator finds that a participant is not entitled to reimbursement of a claim, the Third Party Administrator shall provide to such participant a notice of adverse benefit determination as soon as administratively practicable after the claim is received by the Third Party Administrator, but no later than the time period required by Section 503 of ERISA, if applicable.

c. If a participant appeals an initial adverse benefit determination within one hundred (180) days following receipt of notice, the Third Party Administrator will administer the appeal. Notwithstanding the foregoing, Employer may also choose to conduct its own appeal process and will provide Third Party Administrator reasonable, written notice of same, in which case the Third Party Administrator's obligation with respect to the claim ends upon issuance of the notice of the initial adverse benefit determination, unless directed by Employer to pay the claim following Employer's appeal process.

d. If the Third Party Administrator finds that a participant is entitled to the benefits under the Plan, the Third Party Administrator shall arrange for the proper payment from the Plan and the Bank is authorized by Employer to pay the claim from the Employer's account. Participants may choose direct deposit to participant savings or checking accounts. The Bank shall make payments or distributions from the Employer Account in accordance with the framework of policies, interpretations, rules, procedures set forth in the Plan and as otherwise agreed upon or directed by Employer in writing.

e. As it relates to HRAs, if the claimant requests and the adverse benefit determination is eligible for review by an independent organization in accordance with Section 2719 of the Public Health Service (PHS) Act and its implementing regulations, the Third Party Administrator will make this review available to the claimant at no cost to Employer.

**II. THE EMPLOYER'S RESPONSIBILITIES** Responsibilities of the Employer in the administration of the Plan shall include the following:

**2.1 General Compliance.** Although the Third Party Administrator serves as Employer's agent for services rendered pursuant to this Agreement, the Employer remains the plan sponsor and Plan Administrator. Except to the extent expressly delegated to the Third Party Administrator by this Agreement, Employer is solely responsible for compliance with the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (HIPAA), the Code, the ACA, ERISA, and other applicable laws or regulations.

**2.2 Enrollment.** The Employer or its authorized designee shall assist in the enrollment of participants and provide the Third Party Administrator with a complete list of all participants enrolled in the Plan, and any other demographic and related information that the Third Party Administrator may need to properly administer the Plan pursuant to this Agreement. Employer or its authorized designee shall notify the Third Party Administrator frequently throughout each month of all changes in participants. Employer shall be solely responsible to determine the eligibility of any employee to enroll in the Plan, collect requested enrollment information from employees, and inform the Third Party Administrator of any changes to an employee's enrollment status.

Late notification of Plan eligibility or incorrect Plan eligibility information provided by the Employer or its authorized designee to the Third Party Administrator may result in erroneous Plan benefit payments. In this event, the Employer shall be solely responsible for any such erroneous payment and the Employer shall also be solely responsible for collecting any such erroneous payments from the participant or other individual. If such erroneous payment results in insufficient funds in the Employer's account to pay valid claims, Employer shall restore such funds immediately.

At the Third Party Administrator's discretion, the Third Party Administrator will assist with plan implementation and employee enrollment meetings for an additional fee.

**2.3 MSP Secondary Payor.** Employer shall collect and provide to the Third Party Administrator in an electronic format all required information to ensure compliance with the MSP Secondary Payor rules and regulations where the Third Party Administrator acts as a Registered Reporting Entity (RRE) for HRA plans offered by Employer.

**2.4 Contributions.** Participant contributions, if any, made by participants through salary reduction or otherwise, shall be used to reimburse Employer for contributions advanced by the Employer to pay benefits under the Plan. No participant contributions shall be made to an HRA.

**2.5 Card Use.** When a Card is linked to an FSA or HRA account, Cards used for matched copayments and recurring medical expenses will be automatically substantiated. Cards linked to an FSA or HRA account that are used for other purposes are treated as conditional pending confirmation of the charges through additional third party information. If a Card linked to an FSA or HRA account is used to pay for an ineligible or unsubstantiated expense, Third Party Administrator agrees to reasonably assist in applying correction procedures as follows: For ineligible expenses, this assistance may include issuing a denial letter, asking the participant to repay the claim, offsetting future claims, and/or suspending the debit card until Third Party Administrator receives repayment, where appropriate. For unsubstantiated expenses, this assistance may include issuing a letter notifying a participant of a provisional denial and/or asking the participant to repay the claim or provide proper substantiation where appropriate. If the claim remains outstanding at the end of the Plan year, the Employer agrees to follow correction procedures consistent with the applicable regulatory guidelines, which include, but are not limited to re-crediting participant FSA or HRA accounts by facilitating an after-tax payroll deduction in accordance with applicable law and/or offsetting the amount with an eligible expense.

**2.6 Reporting and Disclosure Obligations.** The Employer shall file with the appropriate governmental agencies all required returns, reports, documents and other papers relating to the Plan. The Employer shall distribute to participants all materials and documents as may be necessary for the operation of the Plan or to satisfy the requirements of applicable law. Employer shall remain responsible for the final contents of all materials and documents, including SPDs, and with respect to an HRA, a Summary of Benefits and Coverage (“SBC”) (unless such HRA is described in the SBC provided by an employer-sponsored group health plan).

**2.7 Form 5500 Preparation.** Employer will file IRS Forms 5500 for employee welfare benefit plans subject to ERISA unless exceptions apply (i.e., certain unfunded welfare benefit plans with fewer than one hundred (100) covered participants are exempt from filing). The Employer may request a referral from the Third Party Administrator to a third party vendor who will assist the Employer with completing Forms 5500 for a separate fee. The Third Party Administrator will provide information it maintains that is requested by the Employer to assist in preparing Forms 5500.

### III. EMPLOYER FUNDING

**3.1 Claims Based Funding.** Employer shall use funds from its general assets to make payments for Plan benefits. Employer shall not set up a trust or an account in the Plan’s name to be used to pay for Plan benefits. Upon the Effective Date of this Agreement, the Third Party Administrator shall establish or maintain a bank account (the “Employer Account”) in the name of “Webster Servicing LLC, for the Benefit of Employer” and transfer general assets of Employer to the account in an amount equal to one twelfth (1/12) of the expected annual Plan contributions (the “Required Minimum Balance”). Employer gives the Bank the right to debit the Employer Account daily via automated clearinghouse (“ACH”) transfers in the amount required to pay claims processed through Bank issued debit cards and the Third Party Administrator fees. Employer gives the Bank the authority to write checks against the account for the payment of manual claims for substantiated expenses from the Plan.

Employer will transfer an amount necessary to return the existing deposit balance to the Required Minimum Balance not less than weekly. In the event that funds in the account are inadequate to pay Plan benefits, the Third Party Administrator shall forward to Employer a report itemizing amounts payable for Plan benefits, and Employer shall immediately transfer said amount plus the amount required to bring the account balance to the Required Minimum Balance. If Employer fails to transfer the required amount of funds to the Employer Account, the Third Party Administrator may immediately cease payment of claims, suspend its obligations under this Agreement, and/or

terminate this Agreement with five (5) days prior written notice. In no event will the Bank be obligated to issue claim payments of any kind if the existing deposit balance falls below zero.

The Third Party Administrator shall provide daily, weekly, and/or monthly reports to Employer itemizing amounts paid or payable for Plan benefits and other Plan expenses, including administrative fees due the Third Party Administrator. The Third Party Administrator shall adjust any claim disputes by Employer, or errors detected by the Third Party Administrator or Employer, in the report for the next period's payment due after the dispute is resolved or errors identified.

#### **IV. SERVICE FEES**

**4.1 Plan Administrative Services Fee.** The Third Party Administrator shall be entitled to a fee for its Plan administrative services, which shall be payable in accordance with the attached Fee Schedule for FSA and HRA Administration Services. Monthly fees will be invoiced for participants enrolled in the Plan during the prior month. If a participant has an active account or arrangement in any day of the prior month, the Employer is responsible for payment for that participant for that month and the Bank is hereby authorized and shall initiate ACH transfers from an Employer account on the 25th of the month in the amount of the invoice. An active account or arrangement includes an employee with an FSA or HRA account or arrangement and a former employee that has elected COBRA continuation coverage with an FSA or HRA arrangement. An active account or arrangement also includes a terminated employee through the end of the Employer's run-out period. This includes employees with FSA or HRA accounts or arrangements that may have a zero (\$0.00) dollars balance eligible for claims.

In the alternative, Third Party Administrator will send Employer a monthly invoice for fees payable for the prior month by email/mail on the 2nd day of each month. Employer shall pay all fees for Plan participants. Employer shall set up a clearing account with Bank for the purpose of paying such fees and shall send to the clearing account a sufficient amount of available funds no later than the 23rd day of each month in order to cover such fees. Employer may send the funds via wire or other method, but agrees to send said monies in a method whereby all funds shall be good and available as of the 24th day of the month. Employer authorizes the Bank to withdraw money from the clearing account to pay such fees on the 25th day of each month. These monies will be payment for the amount shown on the invoice for the prior month. Employer agrees to inform the Third Party Administrator within thirty (30) days from the receipt of the invoice if any fee is disputed.

Employer agrees that failure to pay any such fees is a material breach of this Agreement. If good, available and sufficient monies to cover all fees are not available on the 25th day of the month in which payment is due, then the Bank may collect the fees directly from an Employer account.

**4.2 Right of Offset.** Notwithstanding anything in this Agreement or any other agreement between the Parties to the contrary, if Employer fails to pay the Third Party Administrator within thirty (30) days as a result of any service provided by the Third Party Administrator to Employer under this Agreement or any other agreement between the Parties, the Third Party Administrator shall be permitted, to the extent legally permissible, to deduct the past due amount from any funds provided by Employer pursuant to this Agreement or any other agreement between the Parties which are held by Bank without prior notice and without prior approval of Employer. This right of offset shall be in addition to any other remedies that the Third Party Administrator may have in this Agreement or any other agreement between the Parties with respect to such non-payment, including, without limitation, any right to terminate the Agreement, regardless of whether the past-due amount is paid in full as a result of the offset rights provided herein.

**V. PERFORMANCE AFTER TERMINATION** For clarity, sections **2.4** and **2.5** of the **GENERAL TERMS AND CONDITIONS FOR ALL SERVICES** apply to the services set forth in this Exhibit.

## DEPENDENT CARE FSA'S BENEFIT SERVICES EXHIBIT

**I. DEPENDENT CARE FSAs BENEFIT SERVICES** Services provided by Webster Servicing LLC ("Third Party Administrator") in the administration of Employer's Dependent Care FSA (each, a "DCFSA") shall include the following:

**1.1 DCFSA Administration.** The Third Party Administrator shall assist the Employer in the administration of the DCFSA(s) selected by Employer.

**1.2 DCFSA Documents.** Employer shall be responsible for all DCFSA documents for providing all necessary information to the Third Party Administrator for the Third Party Administrator's proper administration of the DCFSA. The Employer may request a referral by the Third Party Administrator to a third party vendor who will assist the Employer in the creation of Employer's DCFSA documents for a separate fee. It is the Employer's responsibility to ensure that the DCFSA documents are complete, comply with applicable law, and are timely adopted. The Third Party Administrator shall not have any legal responsibility with respect to Employer's DCFSA documents.

**1.3 Record-Keeping.** The Third Party Administrator shall assist the Employer in the development and maintenance of administrative and record-keeping systems for the DCFSA.

**1.4 Claims and Appeals.** The Third Party Administrator may rely on information from the Employer with regard to a DCFSA participant's elections. Claims received from DCFSA participants by the Third Party Administrator will be processed on a daily basis Monday through Friday, during regular business hours, excluding national holidays. The Third Party Administrator shall have no power or authority to waive or modify any terms and conditions of the DCFSA. The following procedures will apply with respect to any DCFSA:

a. The Third Party Administrator shall make the initial claim determination whether to grant or deny each DCFSA participant's claim for benefits in accordance with the DCFSA and any reasonable rules established by the Third Party Administrator. The Third Party Administrator will provide automatic email notification to DCFSA participants who request this service when manual claims are received and reimbursement is sent.

b. If the Third Party Administrator finds that a DCFSA participant is not entitled to reimbursement of a claim, the Third Party Administrator shall provide to such DCFSA participant a notice of adverse benefit determination as soon as administratively practicable after the claim is received by the Third Party Administrator. The notice shall comply with the requirements set out in the DCFSA's SPD if provided.

c. The Third Party Administrator will administer the appeal. Notwithstanding the foregoing, Employer may also choose to conduct its own level appeal and will provide Third Party Administrator with reasonable notice of same, in which case the Third Party Administrator's obligation with respect to the claim ends upon issuance of the notice of adverse benefit determination, unless directed by Employer to pay the claim following Employer's appeal process.

d. If the Third Party Administrator finds that a DCFSA participant is entitled to the benefits under the DCFSA, the Third Party Administrator shall arrange for the proper payment from the DCFSA and the Bank is authorized by Employer to pay the claim from the Employer's Account. DCFSA participants may choose direct deposit to DCFSA participant savings or checking accounts. The Bank shall make payments or distributions from the Employer Account in accordance with the framework of policies, interpretations, rules, practices and procedures set forth in the DCFSA and as otherwise agreed upon or directed by Employer.

**II. THE EMPLOYER'S RESPONSIBILITIES** Responsibilities of the Employer in the administration of the DCFSA shall include the following:

**2.1 General Compliance.** Although the Third Party Administrator serves as Employer's agent for services rendered pursuant to this Agreement, the Employer remains the DCFSA Sponsor and DCFSA Administrator. Except to the extent expressly delegated to the Third Party Administrator by this Agreement, Employer is solely responsible for compliance with all applicable laws and regulations.

**2.2 Enrollment.** The Employer or its authorized designee shall assist in the enrollment of DCFSA participants and provide the Third Party Administrator with a complete list of all DCFSA participants enrolled in the DCFSA, and any other demographic and related information that the Third Party Administrator may need to properly administer the DCFSA pursuant to this Agreement. Employer or its authorized designee shall transfer electronic enrollment data to Bank pursuant to the attached Electronic Enrollment Schedule. Employer or its authorized designee shall notify the Third Party Administrator frequently throughout each month of all changes in DCFSA participants. Employer shall be solely responsible to determine the eligibility of any employee to enroll in the DCFSA, collect requested enrollment information from employees, and inform the Third Party Administrator of any changes to an employee's enrollment status.

Late notification of DCFSA eligibility or incorrect DCFSA eligibility information provided by the Employer or its authorized designee to the Third Party Administrator may result in erroneous DCFSA benefit payments. In this event, the Employer shall be solely responsible for any such erroneous payment and the Employer shall also be solely responsible for collecting any such erroneous payments from the DCFSA participant or other individual. If such erroneous payment results in insufficient funds in the Employer's account to pay valid claims, Employer shall restore such funds immediately.

At the Third Party Administrator's discretion, the Third Party Administrator will assist with DCFSA implementation and employee enrollment meetings for an additional fee.

**2.3 Contributions.** DCFSA participant contributions, if any, made by DCFSA participants through salary reduction or otherwise, shall be used to reimburse Employer for contributions advanced by the Employer to pay benefits under the DCFSA.

**2.4 Card Use.** Charges on cards linked to a DCFSA account are treated as conditional pending confirmation of the charges through additional third party information. If a Card linked to an DCFSA account is used to pay for an ineligible or unsubstantiated expense, Third Party Administrator agrees to reasonably assist in applying correction procedures as follows: For ineligible expenses, this assistance may include issuing a denial letter, asking the Participant to repay the claim, offsetting future claims, and/or suspending the debit card until Third Party Administrator receives repayment, where appropriate. For unsubstantiated expenses, this assistance may include issuing a letter notifying a Participant of a provisional denial and/or asking the Participant to repay the claim or provide proper substantiation where appropriate. If the claim remains outstanding after the end of the DCFSA plan year, the Employer agrees to follow correction procedures consistent with the applicable regulatory guidelines, which include, but are not limited to re-crediting participant FSA accounts by facilitating an after-tax payroll deduction in accordance with applicable law and/or offsetting the amount with an eligible expense.

**2.5 Reporting and Disclosure Obligations.** The Employer shall file with the appropriate governmental agencies all required returns, reports, documents and other papers relating to the DCFSA. The Employer shall distribute to DCFSA participants all materials and documents as may be necessary for the operation of the DCFSA or to satisfy the

requirements of applicable law. Employer shall remain responsible for the final contents of all materials and documents.

### III. EMPLOYER FUNDING

**3.1 Claims Based Funding.** Employer shall use funds from its general assets to make payments for DCFSA benefits. Employer shall not set up a trust or an account in the DCFSA's name to be used to pay for DCFSA benefits. Upon the Effective Date of this Agreement, the Third Party Administrator shall establish or maintain a bank account (the "Employer Account") in the name of "Webster Servicing LLC, for the Benefit of Employer" and transfer general assets of Employer to the account in an amount equal to one twelfth (1/12) of the expected annual DCFSA contributions (the "Required Minimum Balance"). Employer gives the Bank the right to debit the Employer Account daily via automated clearinghouse ("ACH") transfers in the amount required to pay claims processed through Bank issued debit cards and the Third Party Administrator fees. Employer gives the Bank the authority to write checks against the account for the payment of manual claims for substantiated expenses from the DCFSA.

Employer will transfer an amount necessary to return the existing deposit balance to the Required Minimum Balance not less than weekly. In the event that funds in the account are inadequate to pay DCFSA benefits, the Third Party Administrator shall forward to Employer a report itemizing amounts payable for DCFSA benefits, and Employer shall immediately transfer said amount plus the amount required to bring the account balance to the Required Minimum Balance. If Employer fails to transfer the required amount of funds to the Employer Account, the Third Party Administrator may immediately cease payment of claims, suspend its obligations under this Agreement, and/or terminate this Agreement with five (5) days prior written notice. In no event will the Bank be obligated to issue claim payments of any kind if the existing deposit balance falls below zero.

The Third Party Administrator shall provide daily, weekly, and/or monthly reports to Employer itemizing amounts paid or payable for DCFSA benefits and other DCFSA expenses, including administrative fees due the Third Party Administrator. The Third Party Administrator shall adjust any claim disputes by Employer, or errors detected by the Third Party Administrator or Employer, in the report for the next period's payment due after the dispute is resolved or errors identified.

### IV. SERVICE FEES

**4.1 Benefit Services Fee.** The Third Party Administrator shall be entitled to a fee for its DCFSA administrative services, which shall be payable in accordance with the attached Fee Schedule for DCFSA Administration Services. Monthly fees will be invoiced for DCFSA participants enrolled in the DCFSA during the prior month. If a DCFSA participant has an active account or arrangement in any day of the prior month, the Employer is responsible for payment for that DCFSA participant for that month and the Bank is hereby authorized and shall initiate ACH transfers from an Employer account on the 25th of the month in the amount of the invoice. An active account or arrangement includes an employee with a DCFSA account or arrangement. An active account or arrangement also includes a terminated employee through the end of the Employer's run-out period. This includes employees with DCFSA accounts or arrangements that may have a zero (\$0) balance eligible for claims.

In the alternative, Third Party Administrator will send Employer a monthly invoice for fees payable for the prior month by email/mail on the 2nd day of each month. Employer shall pay all fees for DCFSA participants. Employer shall set up a clearing account with Bank for the purpose of paying such fees and shall send to the clearing account a sufficient amount of available funds no later than the 23rd day of each month in order to cover such fees. Employer may send the funds via wire or other method, but agrees to send said monies in a method whereby all funds shall be good and

available as of the 24th day of the month. Employer authorizes the Bank to withdraw money from the clearing account to pay such fees on the 25th day of each month. These monies will be payment for the amount shown on the invoice for the prior month. Employer agrees to inform the Third Party Administrator within thirty (30) days from the receipt of the invoice if any fee is disputed.

Employer agrees that failure to pay any such fees is a material breach of this Agreement. If good, available and sufficient monies to cover all fees are not available on the 25th day of the month in which payment is due, then the Bank may collect the fees directly from an Employer account.

**4.2 Right of Offset.** Notwithstanding anything in this Agreement or any other agreement between the Parties to the contrary, if Employer fails to pay the Third Party Administrator within thirty (30) days as a result of any service provided by the Third Party Administrator to Employer under this Agreement or any other agreement between the Parties, the Third Party Administrator shall be permitted to deduct the past due amount from any funds provided by Employer pursuant to this Agreement or any other agreement between the Parties which are held by Bank without prior notice and without prior approval of Employer. This right of offset shall be in addition to any other remedies that the Third Party Administrator may have in this Agreement or any other agreement between the Parties with respect to such non-payment, including, without limitation, any right to terminate the Agreement, regardless of whether the past-due amount is paid in full as a result of the offset rights provided herein.

**4.3 DCFSA Participant Counts.** DCFSA participant counts for billing purposes are determined on the first business day of each month.

**V. PERFORMANCE AFTER TERMINATION** For clarity, sections **2.4** and **2.5** of the **GENERAL TERMS AND CONDITIONS FOR ALL SERVICES** apply to the services set forth in this Exhibit.

## **SCHEDULE OF FEES**

### **Plan Administrative Services**

Fees for Plan Administrative Services are charged on a Per Participant Per Month (PPPM) basis:

- Health Flexible Spending Accounts - \$2.50(PPPM)
- Limited Purpose Health Flexible Spending Accounts - \$1.50 (PPPM)
- Program Setup fee (one time) –WAIVED

### **Benefit Administrative Services**

- Dependent Care FSA – \$1.50 (PPPM)

### **Optional Services:**

- Plan Document Creation –WAIVED
- Nondiscrimination Testing and Reporting –WAIVED

## HEALTH PLAN CLAIMS DATA EXCHANGE EXHIBIT

Employer represents and warrants that it has obtained any necessary authorization from the participants in the group health plan(s) it sponsors and will direct its medical, dental, and vision insurance issuers and/or third-party administrators and pharmacy benefits managers (each, a "Vendor") to transmit claims information, including employee cost-sharing obligations for medical expenses, prescription drugs, and other health related services and products (defined herein as "Health Plan Claims Data") to Bank and/or Third Party Administrator, as applicable. The Health Plan Claims Data shall be transmitted in accordance with agreed upon format and standards, which may be updated from time to time. Employer further represents and warrants that it shall describe the transfer of the Health Plan Claims Data to Bank and/or Third Party Administrator, as applicable, for this purpose in its privacy policies made available to participants, as and to the extent required by law.

Bank and/or Third Party Administrator, as applicable, may use the Health Plan Claims Data to display, substantiate, pay claims directly to participants, or healthcare providers at participants' direction, subject to the availability of funds in a participant's HSA, medical FSA or HRA, as applicable. No payments will be made by Bank and/or Third Party Administrator, as applicable, from its own funds.

Employer or its Vendor shall operate and maintain the necessary and appropriate information systems in order to provide Bank and/or Third Party Administrator, as applicable with Health Plan Claims Data, including without limitation, enabling a secure interface with the Bank and/or Third Party Administrator, as applicable to allow for the transmission of the Health Plan Claims Data on a periodic basis established by the Bank and/or Third Party Administrator, as applicable. Employer shall provide Bank and/or Third Party Administrator, as applicable, with a minimum thirty (30) day advance written notice of any changes to its information systems that may disrupt or limit Bank's and/or Third Party Administrator's access to Health Plan Claims Data and other information needed to perform the services under this Exhibit.

The Parties agree that, with regard to medical FSAs and HRAs, Health Plan Claims Data will include protected health information and be subject to the Business Associate Agreement between the Parties, as may be amended from time to time. For the avoidance of doubt, however, with regard to HSAs and Health Plan Claims Data loaded into account profiles for Depositor, the Health Plan Claims Data is Depositor's Health Plan Claims Data, not that of the Employer or its group health plan, and is not protected health information subject to any Business Associate Agreement between the Parties.

## BUSINESS ASSOCIATE AGREEMENT EXHIBIT

Notwithstanding any provision to the contrary in the Agreement, this Business Associate Addendum (“Addendum”) shall supersede any conflicting terms and provisions of the Agreement to which this Addendum is attached, including any exhibits or other attachments thereto and all documents incorporated therein by reference, to the extent necessary to permit compliance with the HIPAA Rules (as defined below). This Addendum may be executed and made effective prior to execution of a written contract reflecting the Agreement.

This Addendum is intended to comply with the Administrative Simplification provisions in Part C of the Health Insurance Portability and Accountability Act of 1996, Public Law 104 191 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”) under Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and by the Genetic Information Nondiscrimination Act of 2008, Public Law 110-233 (“GINA”).

### RECITALS

**WHEREAS**, Plan Sponsor (as defined below) and Third Party Administrator are parties (or in good faith negotiations to become parties) to an Agreement pursuant to which the Third Party Administrator provides certain services to Plan Sponsor and the Covered Entity and, in connection with those services, Covered Entity (and Plan Sponsor or another Business Associate of Covered Entity) discloses Protected Health Information (as defined below) to the Third Party Administrator, and the Third Party Administrator creates and receives Protected Health Information on behalf of Covered Entity;

**WHEREAS**, the HIPAA Rules (as defined below), including Business Associate provisions, do not apply to banking and financial institutions with respect to certain payment processing activities, as identified in Section 1179 of the HIPAA Statute, to the extent that those activities constitute authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments for health care or health plan premiums; and

**WHEREAS**, to the extent that the Third Party Administrator provides services to the Covered Entity in its capacity as Business Associate which involve access to Protected Health Information and such services are in addition to the payment processing activities identified above and which are thus not excluded under the Section 1179 exemption, Covered Entity and the Third Party Administrator, acting in its capacity as Business Associate, wish to modify the Agreement to include certain provisions which would be required by the HIPAA Rules for a Business Associate.

**NOW THEREFORE**, for and in consideration of the recitals above and mutual covenants and conditions below, Plan Sponsor and the Third Party Administrator, acting in its capacity as Business Associate, enter into this Addendum, and agree as follows:

#### I. DEFINITIONS

**1.1 Catch-all Definition.** The following terms used in this Addendum shall have the same meaning as those terms in the HIPAA Rules: Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Subcontractor, and Use.

#### **1.2 Specific Definitions.**

- a. Breach. “Breach” shall have the meaning given to the term “breach” at 45 CFR §164.402, as applied to the Unsecured Protected Health Information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

- b. Business Associate. "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 CFR §160.103, and in reference to the party to this Addendum, shall mean Webster Servicing LLC.
- c. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 CFR §160.103, and in reference to the party to this Addendum, shall mean the Employer sponsored HRA and/or FSA plan(s) specified the Plan Administration Services Exhibit FSAs and HRAs.
- d. Electronic Protected Health Information. "Electronic Protected Health Information" shall have the meaning given to the term "electronic protected health information" at 45 CFR §160.103, as applied to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
- e. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- f. Individual. "Individual" shall have the meaning given to such term at 45 CFR §160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- g. Plan Sponsor. "Plan Sponsor" shall mean Employer.
- h. Protected Health Information. "Protected Health Information" shall have the meaning given to the term "protected health information" at 45 CFR §160.103, as applied to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
- i. Security Incident. "Security Incident" shall have the meaning given to the term "security incident" at 45 CFR §164.304, as applied to the Electronic Protected Health Information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.
- j. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the meaning given to the term "unsecured protected health information" at 45 CFR §164.402, as applied to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

## **II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

Business Associate agrees to:

- a. Not use or disclose Protected Health Information other than as permitted or required by this Addendum and the Agreement or as Required By Law;
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by this Addendum;
- c. Report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Addendum or any Security Incident of which it becomes aware, including any Breach of Unsecured Protected Health Information within (60) sixty days of discovery, as required at 45 CFR §164.410. The parties acknowledge and agree that this Section II.c constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that do not result in unauthorized access to, or

use, loss, modification, destruction, or disclosure of, Protected Health Information, such as pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, unsuccessful denial of service attacks, or any combination thereof;

d. 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 Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

e. Make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR §164.524, and forward any such request from an Individual to the Covered Entity as necessary for the Covered Entity to satisfy its obligations under 45 CFR §164.524;

f. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR §164.526, and forward any such request from an Individual to the Covered Entity as necessary for the Covered Entity to satisfy its obligations under 45 CFR §164.526;

g. Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR §164.528, and forward any such request from an Individual to the Covered Entity as necessary for the Covered Entity to satisfy its obligations under 45 CFR §164.528;

h. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) 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 obligation(s); and

i. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

### **III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

a. Business Associate may use and disclose Protected Health Information as necessary to perform the services set forth in the Agreement.

b. Business Associate may use or disclose Protected Health Information as Required By Law.

c. Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with HIPAA's minimum necessary requirements.

d. Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 (the Privacy Rule) if done by Covered Entity, except for the specific uses and disclosures set forth in paragraphs (e)-(h) below.

e. Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

f. Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided (1) the disclosure is Required By Law, or (2) Business Associate obtains reasonable assurances from the

person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required By Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

g. Business Associate may provide Data Aggregation services relating to the Health Care Operations of the Covered Entity.

h. Business Associate may use and disclose Protected Health Information to seek authorization from an Individual to the extent such authorization is required by 45 CFR §164.508. Business Associate may use or disclose Protected Health Information pursuant to a valid authorization by an Individual that satisfies the requirements of 45 CFR §164.508, except for uses or disclosures of psychotherapy notes or genetic information.

i. Business Associate may use and disclose Protected Health Information to create de-identified information in accordance with 45 CFR §§164.502(d) and 164.514(a)-(c).

j. Business Associate may use and disclose Protected Health Information to report violations of law to appropriate federal, state, and local authorities, consistent with 45 CFR §164.502(j).

#### **IV. PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS**

a. Covered Entity shall notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information;

b. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information; and

c. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

#### **V. PERMISSIBLE REQUESTS BY COVERED ENTITY**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

#### **VI. TERM AND TERMINATION**

**6.1 Term.** The Term of this Addendum shall be effective as of the date Business Associate first creates or receives Protected Health Information from or on behalf of the Covered Entity, and shall terminate upon the date of termination of this Addendum, the Agreement or on the date Covered Entity or Business Associate terminates for cause as authorized in Section 6.2, whichever is sooner.

##### **6.2 Termination for Cause.**

a. If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of the Covered Entity's obligation under the Agreement, Covered Entity will:

- i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Addendum and any relevant sections of the Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
  - ii. Immediately terminate this Addendum and any relevant sections of the Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.
- b. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of the Covered Entity's obligation under the Agreement, Business Associate will:
  - i. Provide an opportunity for Covered Entity to cure the breach or end the violation and terminate this Addendum and any relevant sections of the Agreement if Covered Entity does not cure the breach or end the violation within a reasonable time specified by Business Associate; or
  - ii. Immediately terminate this Addendum and any relevant sections of the Agreement if Covered Entity has breached a material term of this Addendum and cure is not possible.

### **6.3 Obligations of Business Associate Upon Termination.**

- a. Subject to paragraph (b) below, upon termination of this Addendum for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall return or destroy all Protected Health Information that Business Associate still maintains in any form. Business Associate shall retain no copies of such Protected Health Information.
- b. If return or destruction of any or all Protected Health Information is not feasible, Business Associate shall:
  - i. Retain only that Protected Health Information for which return or destruction is not feasible;
  - ii. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;
  - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information to prevent use or disclosure of the Protected Health Information other than as provided for in this Section for as long as Business Associate retains the Protected Health Information;
  - iv. Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set forth in this Addendum which applied prior to termination; and
  - v. Return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate if and when it becomes feasible to do so.

**6.4 Survival.** The obligations of Business Associate under this Section shall survive the termination of this Addendum.

## **VII. MISCELLANEOUS**

**7.1 Regulatory References.** A reference in this Addendum to a section in the HIPAA Rules means the section as in effect or as amended at the time this Addendum is executed or amended.

**7.2 Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

**7.3 Interpretation.** Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA Rules.

**7.4 State Law.** Nothing in this Addendum shall be construed to require Business Associate to use or disclose Protected Health Information without a written authorization from an Individual who is a subject of the Protected Health Information, or written authorization from any other person, where such authorization would be required under applicable state law for such use or disclosure. Covered Entity hereby acknowledges and agrees that it is Covered Entity's responsibility to inform Business Associate of any state law provisions that are more restrictive than HIPAA Rules.

**7.5 No Third Party Beneficiaries.** This Addendum is between the parties hereto. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, any rights, remedies, obligations, or liabilities whatsoever upon any person other than Covered Entity, Plan Sponsor, and Business Associate and any respective successors and assigns.

**HSA Bank Service Levels**

**County of El Paso 2025**

<b>Service Standard</b>	<b>Description</b>	<b>Method of Measurement</b>
Customer Service	Live English-speaking, customer service representatives will be available. With the exception of the are five holidays the CAC is closed. Labor Day, Memorial Day, Thanksgiving, Christmas, and 4th of July.	24x7x365 minus holidays
Multilingual Support	Spanish speaking representatives will be available. With the exception of the are five holidays the CAC is closed. Labor Day, Memorial Day, Thanksgiving, Christmas, and 4th of July.	24x7x365 minus holidays
Interactive Phone (VRU) <sup>1</sup>	The VRU Service Level measures the availability of the Service. "Availability" is defined as, "Able to be Accessed AND replying with data".	80% of calls answered within 30 seconds (May-Nov)  80% of calls shall be answered within 60 seconds (Dec-Apr). To be measured by calculating the number of calls answered in time frame divided by the total number of incoming calls in that timeframe. In certain circumstances, these SLAs can be tracked at the Client level.
<b>Service Standard</b>	<b>Description</b>	<b>Method of Measurement</b>
Average Speed to Answer (ASA)*	This is the average time it takes for a customer's call to be answered in the call center.	80% of calls answered within 30 seconds (May-Nov)  80% of calls shall be answered within 60 seconds (Dec-Apr). To be measured by calculating the number of calls answered in time frame divided by the total number of incoming calls in that timeframe.
Calls Abandoned <sup>2</sup>	This is the number of calls where the customer abandon's the call	5%<
Website	Application Availability Service Level measures availability of the Administrator and Employer portals to any user. "Availability" is defined as, "Able to be Accessed AND displaying accurate data". If the portal can be viewed but is not displaying accurate data, then the application is not available. If the portal can be viewed by some users but not all then the application is not available.	The Application Availability Service Level of 99.5% is calculated by taking the sum (in minutes) of the actual availability during the month (minus maintenance down time and/or Force Majeure events) divided by the total number of minutes in the month (minus maintenance down

<sup>1</sup> Will require a custom phone number. May be tracked specifically

<sup>2</sup> Will require a custom phone number. May be tracked specifically

		time and/or Force Majeure events), and multiplying the quotient by 100.
Email Correspondence	Email correspondence from Depositors to the Client Assistance Center shall receive a response.	95% of emails responded within two business days of receipt. The measurement is for the entire book of business.
Deposits and Withdrawals	Contribution and Distributions not requiring follow up.	80% of Contributions and Normal Distributions not requiring follow-up will be processed within [5] business days. The measurement is for the entire book of business.
<b>Service Standard</b>	<b>Description</b>	<b>Method of Measurement</b>
Account Opening	Accounts which have complete information submitted to their employer.	Accounts which have complete information and do not require exception processing shall be opened within a blended average of all enrollment methods of [3] Business Days of receipt for [95%] of applications and within [5] Business Days for [99%] of applications.
Statements	Depositor account statements.	Depositor account statements shall be available within an average of [15] Business Days of the end of the previous cycle closing date for [99%] of depositors, excluding December statements which include tax documents and will be available no later than January 31 of each following year.
Welcome Kits	Introductory letter to the account holder containing a product overview, account disclosures and other pertinent details for sue of the account.	From opening of account, a new Welcome Kit will be ordered:  Off Peak: May – Nov  95% within 5 business days / 100% within 7 business days  During Peak: Dec - Apr  95% within 7 business days / 100% within 10 business days

Debit Card Issuance	Debit Card ordered for new accounts.	<p>From opening of account, a new card will be ordered:</p> <p>Off Peak: May - November</p> <p>95% within 5 business days / 100% within 10 business days</p> <p>During Peak: December-April</p> <p>95% within 10 business days</p> <p>100% within 11 business days</p>
<b>Service Standard</b>	<b>Description</b>	<b>Method of Measurement</b>
Card Authorizations	Debit Card Authorizations.	The Card Authorization Service Level of 99.8% measures the availability of, access to and functioning as expected the Card Processing System. The definition of functioning as expected means that the card authorizations must return information to the user as designed and with accurate data. The Card Authorization Service Level is calculated by taking the sum (in minutes) of the actual availability during the month (minus maintenance down time and/or Force Majeure events) divided by the total number of minutes in the month (minus maintenance down time and/or Force Majeure events), and multiplying the quotient by 100.
Claim adjudication rate	Claim turnaround time between claim submission including decision reached.	<p>Claim adjudication rate</p> <p>Claim turnaround time between claim submission including appropriate substantiation and payment posting is two business days. Performance target 95%.</p>
Financial accuracy	Claims amount adjudication accuracy against claim submission.	98% of claim amounts adjudicated accurately
Overall accuracy	Claims adjudication accuracy against IRS guidelines.	98% of claim adjudicated accurately against IRS guidelines