



# NATIONAL BENEFIT SERVICES, LLC

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## COBRA

### SERVICE AGREEMENT

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**Employer:** Santaquin City

**Engagement.** The above named employer ("Employer") hereby retains National Benefit Services, LLC ("NBS"), a Utah limited liability company, (collectively referred to as the "Parties" herein), to provide certain non-discretionary, ministerial administrative services with respect to COBRA requirements described in Schedule A attached to this Agreement.

**Relationship of the Parties.** Because Employer is subject to federal requirements imposed by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) to offer health benefit continuation coverage to certain individuals who would otherwise lose group health coverage; and because NBS is willing to provide administrative services to assist Employer in meeting the requirements of COBRA; the Parties agree as follows:

1. **Definitions.** The following terms have the associated meaning as used in this Agreement, including any attachments.

- A. **Group Health Plan**—Any plan, fund or program established or maintained by Employer for the purpose of providing medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability or other enumerated benefits for its employees, former employees, or their beneficiaries. As used herein, "enumerated benefits" shall include any group dental, vision, or FSA plan which is established or maintained by Employer.
- B. **Participant**—Any Qualified Beneficiary or dependent of a Qualified Beneficiary who has elected to participate in COBRA by completing a COBRA enrollment application, and has not been disqualified from participation because of non-payment of COBRA premiums.
- C. **Qualified Beneficiary**—Any employee or dependent who is covered under the Group Health Plan on the day before a Qualifying Event.
- D. **Qualifying Event**—Any of the occurrences listed below, which cause an employee or dependent who is covered under the Group Health Plan to be disqualified from group coverage:
  - i. Termination of employment of employee for any reason (other than for gross misconduct)

- ii. Reduction of employee's work hours, including work stoppage and non-FMLA leave-of-absence
  - iii. Employee's divorce or legal separation from spouse which disqualifies the spouse from coverage under the Group Health Plan
  - iv. Employee's dependent child's disqualification from coverage under the Group Health Plan because the child loses dependent status under the terms of the Group Health Plan.
  - v. Employee's dependent ceases to qualify for dependent coverage because employee becomes entitled to Medicare.
  - vi. Employee's dependent ceases to qualify for dependent coverage because of the death of the covered employee.
  - vii. Bankruptcy of the Employer may constitute a Qualifying Event for retirees (and their dependents) who are covered by the Group Health Plan.
2. **NBS Services.** NBS shall provide for Employer the services enumerated on Schedule A, which is attached and hereby incorporated into this Agreement. The provision of any services which are not included on Schedule A by NBS shall not constitute a modification of this agreement, and shall not guaranty the ongoing provision of such services.
3. **Employer Obligations to NBS.** Employer shall perform the responsibilities enumerated on Schedule C, which is attached and hereby incorporated into this Agreement. The failure to perform the Employer Obligations enumerated on Schedule C will constitute a material breach of the provisions of this agreement. Employer also shall pay the fees enumerated on Schedule B unless payment is arranged through a third party.
4. **NBS Trust Account.** Employer agrees that all funds and contributions under the Plan remitted to NBS shall be deposited to NBS's trust account. Employer agrees to be bound by the operating guidelines for such trust account as set forth herein. Such funds or contributions from Employer shall, at all times, be and remain subject to control of Employer until disbursed pursuant to the Plan. NBS shall pay the payments and reimbursements allowed under the Plan as well as fees and costs of NBS (if payment or reimbursement is not otherwise made or provided for), and any other amounts authorized by Employer. All such books and records, bank statements and canceled checks regarding the Plan and the trust account shall be retained and stored by NBS. The operating guidelines for such trust account are as follows:
- A. An administration fee of 2% of the entire premium for coverage under the Group Health Plan will be retained by NBS from payments received from participants and is not included as a part of the trust assets;
  - B. NBS will maintain accurate records of the amounts remitted to NBS with respect to the Plan so as to facilitate proper accounting of the contributions into and from the trust account;
  - C. NBS will draw no check from the trust account on behalf of the Plan where such check would have the effect of drawing the balance for the Plan into a negative status;

- D. The name of the trust account will be in the name of NBS but designated as a "trust account" or as an "agency account" or other designation which indicates the agency position of NBS with respect to the trust account;
  - E. NBS shall not be liable for any earnings on the trust account; and
  - F. NBS shall maintain fidelity bonding in an amount of not less than \$50,000 on all of its employees who handle or control funds or moneys in the trust account.
5. **Access to Records.** The records of the Plan maintained by NBS shall be open to examination by the Employer (the Administrator of the Plan), government regulatory agencies, or any other person or authorized representative who, by law or provisions of the Plan, is permitted access to such records.
6. **Written Directions.** So that adequate records may be maintained, the Parties each agree to give directions, instructions and other communications, as needed, to each other in written form in the manner and location identified below as acceptable for delivery and receipt of notice of termination under this agreement.
7. **Nonexclusive Services.** The Parties acknowledge and agree that NBS will be performing similar services and other types of work for other employee benefit Plans. Nothing contained in this Agreement shall grant to any party any right, title or interest in or to the business activities or opportunities of any other party or the power or authority to contract on behalf of the other Parties other than as specifically provided in this Agreement.
8. **Term.** This Agreement is for provision of services for an initial period of one year from the date services are first performed under the Agreement. The Agreement automatically renews annually thereafter on the first day following completion of the initial period, unless notice of termination is received in the manner described in paragraph 9 below.
9. **Termination.** Either party may terminate this agreement upon giving at least thirty (30) days prior written notice to the other party. NBS shall be entitled to the full payment of all fees for services rendered through the date of termination and for copy charges associated with any requests for Plan records or documents. Notice of termination may be delivered personally or by the following means:

For NBS:

By Mail: COBRA at National Benefit Services  
P.O. Box 6980  
West Jordan, UT 84084

By E-Mail: [service@nbsbenefits.com](mailto:service@nbsbenefits.com)

By Fax: 866-909-6525

10. **Indemnification.** Employer agrees to defend, hold harmless and indemnify NBS from all liability arising from Employer's failure to satisfy the obligations under this agreement, and NBS agrees to defend, hold harmless and indemnify Employer from all liability arising from NBS' failure to satisfy the obligations under this agreement. The indemnification includes the expenses of

defending or settling any court proceeding brought against NBS or Employer by any third party. Employer is not required to indemnify NBS and NBS is not required to indemnify Employer for any liability for which the other Party is found to be solely responsible.

11. *Integration and Severability.* This Service Agreement, together with all attachments hereto, represents the entire agreement of the Parties, and supersedes any prior agreement between the Parties for provision of COBRA services. In the event that any provision or portion of this agreement is declared void or unenforceable in a court of law, the remaining provisions of this contract shall remain binding upon the Parties as if the void or unenforceable provision had not been included. No modification of this agreement shall be effective unless in writing and signed by the Parties.
12. *NBS Not a Plan Administrator or Fiduciary.* By signing below, the Parties acknowledge that NBS' provision of record-keeping and administrative services hereunder is not intended to make NBS a Plan Administrator or a Fiduciary to the Plan as those terms are defined in ERISA § 3. The Parties further acknowledge that this agreement does not grant to NBS any discretionary authority or control respecting management or administration of the Plan. The Parties understand that NBS provides no accounting services outside of the record-keeping services required for the Plan. NBS does not provide legal services. Accordingly, all plan documents and forms completed by NBS should be reviewed by competent legal counsel.
13. *Compliance/Breach.* If Employer fails to comply with any of the terms and conditions contained in the Service Agreement, Employer will be in breach of contract and NBS shall have the right to cease immediately to provide any further services to Employer or Plan without waiving NBS' right to receive payment for services rendered and costs incurred.
14. *Miscellaneous provisions:*
  - A. The nonprevailing party shall pay all costs and expenses, including reasonable attorney fees, incurred by the prevailing party in enforcing its rights under this agreement.
  - B. Each party shall obtain the prior written consent of the other party concerning the content and plan of distribution of any public announcement, press release or advertisement concerning this agreement.
  - C. The Parties shall keep confidential, and may not disclose to any third person, all information that they have, obtain, develop or utilize in connection with performing services pursuant to this Agreement, including but not limited to (a) all written or oral information, data, reports, opinions, conclusions, analyses, materials, and other work product, regardless of format, which are provided by Employer or developed for Employer; (b) any credit, legal, asset, economic, marketing, collateral files, donor lists, patient information and (c) the substance, terms, conditions or fact or any discussions between Employer and NBS concerning this agreement or any of the foregoing (collectively the "Confidential Information"). Both parties acknowledge that the restrictions relating to Confidential Information obtained pursuant to this Agreement are reasonable and necessary, that violation of these restrictions could cause damage to the other



party, and that the other party will be entitled to injunctive relief against each violation. This section shall survive any termination, cancellation or expiration of this Agreement. Notwithstanding the foregoing, the parties may disclose only such Confidential Information as is required to perform the services enumerated in this agreement, and to comply with all federal and state privacy laws.

- D. Paragraph headings are for convenience. It is agreed that the standard of care imposed upon NBS by this Agreement is to act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. NBS shall be solely responsible for the conduct and control of the work to be performed under this Agreement by NBS and its representatives, subcontractors, agents or employees. The Parties submit to the exclusive jurisdiction of and venue in the appropriate courts located in Salt Lake County, Utah.
- E. For provision of all services selected by the employer and provided by NBS, time is of the essence. Failure by the Employer to comply with the timing provisions specifically identified herein shall constitute a violation of the terms of this agreement. In the context of Employer's provision of information, in no event is the furnishing of information considered timely if it occurs beyond the deadline specified in the request for information. .

IN WITNESS HEREOF, the parties hereto have executed this Service Agreement on the date below written.

SANTAQUIN CITY

Signed: James E. Schaffner

Title: Mayor

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

NATIONAL BENEFIT SERVICES, LLC

Signed: Paul R. Lovell

Title: President

Date: September 1, 2011