

## BUSINESS ASSOCIATE AGREEMENT

To the extent that Covered Entity discloses Protected Health Information to Business Associate (or Business Associate handles Protected Health Information on Covered Entity's behalf) in connection with services or products provided to Covered Entity, or as otherwise required or allowed by the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, codified at 42 U.S.C. §1320d through d-9, as amended, ("HIPAA"), and only to the extent required by law, Covered Entity and Business Associate agree to the following terms and conditions, which are intended to comply with HIPAA, the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and their implementing regulations:

### 1. General Terms and Conditions

- (a) "BA Agreement" shall mean this HIPAA Business Associate Agreement.
- (b) "Business Associate" shall generally have the same meaning as the term "business associate" at 45 C.F.R. §160.103, and in reference to the party to this BA Agreement, shall mean **Employee Benefits Specialists, Inc.**, a California corporation.
- (c) "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. §160.103, and in reference to the party to this BA Agreement, shall mean FDAC EBA.
- (d) "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- (e) "Service Agreement" shall mean the separate agreement(s) between the parties in which Business Associate performs functions or activities on behalf of Covered Entity.
- (f) Other definitions: The following terms used in this BA Agreement shall have the same meaning as those in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (to the extent such Protected Health Information is received, used, disclosed, accessed or maintained by Business Associate), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Other terms shall have the definitions set forth in this BA Agreement.

### 2. Obligations and Activities of Business Associate

- (a) Business Associate agrees to not Use or Disclose Protected Health Information other than as permitted or required by this BA Agreement, as Required by Law, or as contemplated by the Service Agreement.
- (b) Business Associate agrees to use appropriate safeguards, including compliance with Subpart C of 45 C.F.R. Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of the electronic Protected Health Information other than as permitted by this BA Agreement.

- (c) Business Associate agrees to report to Covered Entity's Privacy Official any Use or Disclosure of Protected Health Information not provided for by this BA Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required by 45 C.F.R. §164.410, and any Security Incident of which it becomes aware. For reports of incidents constituting a Breach, the report shall include, to the extent available, the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or Disclosed during such Breach. Security Incidents that do not result in any unauthorized access, use, disclosure, modification, destruction of information or interference with system operations will be reported in the aggregate upon written request of Covered Entity in a manner and frequency mutually acceptable to the parties. Business Associate hereby reports to Covered Entity that incidents including, but not limited to, ping sweeps or other common network reconnaissance techniques, attempts to log on to a system with an invalid password or username, and denial of service attacks that do not result in a server being taken off line, may occur from time to time.
- (d) In accordance with 45 C.F.R. §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree to the same restrictions, conditions and requirements that apply through this BA Agreement to Business Associate with respect to such information.
- (e) To the extent Business Associate has Protected Health Information in a Designated Record Set, and only to the extent required by HIPAA, Business Associate agrees to make available Protected Health Information in a Designated Record Set, to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.524. The Parties agree and acknowledge that it is Covered Entity's responsibility to respond to all such requests.
- (f) Business Associate agrees to make Protected Health Information available for purposes of any amendment(s) to Protected Health Information in its possession contained in a Designated Record Set as agreed to by Covered Entity pursuant to 45 C.F.R. §164.526 or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.526. The Parties agree and acknowledge that it is Covered Entity's responsibility to respond to all such requests.
- (g) Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.528. The Parties agree and acknowledge that it is Covered Entity's responsibility to respond to all such requests.
- (h) To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164 of the HIPAA Rules, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

- (i) Business Associate agrees to make its internal practices, books, and records related to Business Associate's use and disclosure of Protected Health Information received from Covered Entity available to the Secretary for purposes of determining compliance with the HIPAA Rules.

**3. Permitted Uses and Disclosures of Protected Health Information by Business Associate**

- (a) Business Associate may use or disclose Protected Health Information as necessary to perform the services set forth in the Service Agreement, as permitted in this BA Agreement and the Service Agreement, and as otherwise permitted by the HIPAA Rules.
- (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 the requirements in the HIPAA Rules regarding Minimum Necessary uses and disclosures. Covered Entity represents and warrants that its Minimum Necessary policies and procedures and the Notice of Privacy Practices are consistent with, and not more stringent than, the HIPAA Rules or, to the extent that Covered Entity's Notice of Privacy Practices or policies and procedures regarding the Minimum Necessary requirements of the HIPAA Rules impose additional particular restrictions on Business Associate, Covered Entity agrees to provide such policies to Business Associate in writing prior to requesting that Business Associate perform a particular function or activity on behalf of Covered Entity that would be affected by such policies and procedures.
- (d) Business Associate may create de-identified information that may be used and disclosed by Business Associate as Business Associate deems appropriate, provided that the information is de-identified in accordance with the HIPAA Rules.
- (e) Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity. Business Associate may also use Protected Health Information to create, use and disclose a Limited Data Set consistent with the HIPAA Rules.
- (f) Business Associate may use and disclose Protected Health Information to report violations of law to appropriate Federal and State authorities, in a manner consistent with the HIPAA Rules.
- (g) Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below.
- (h) Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- (i) B  
and administration of Business Associate or to carry out the legal responsibilities of Business

Business Associate may disclose Protected Health Information for the proper management

Associate, provided that the disclosures are Required By Law or 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.

#### **4. Obligations of Covered Entity**

- (a) Covered Entity shall notify Business Associate, in writing and in a timely manner, of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 C.F.R. §164.520, and its policies regarding the "minimum necessary" requirements in 45 C.F.R. §164.502(b) to the extent that such limitation may affect Business Associate's Use or Disclosure of Protected Health Information, and to notify Business Associate of any material changes thereof.
- (b) Covered Entity shall notify Business Associate, in writing and in a timely manner, of any changes in, or revocation of, permission by Individual to Use or Disclose Protected Health Information, if such changes may affect Business Associate's Use or Disclosure of Protected Health Information.
- (c) Covered Entity shall notify Business Associate, in writing and in a timely manner, of any restriction on the Use and/or Disclosure of Protected Health Information to which Covered Entity has agreed or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's Use or Disclosure of Protected Health Information.
- (d) Covered Entity agrees to comply with all applicable state and federal privacy and security laws and regulations, including the HIPAA Rules. Covered Entity agrees to obtain any patient authorizations or consents that may be required under state or federal law or regulation in order to transmit Protected Health Information to Business Associate and to enable Business Associate and its subcontractors to Use and Disclose Protected Health Information as contemplated by this BA Agreement and the Service Agreement.
- (e) Covered Entity may not ask Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under applicable laws and rules, including the HIPAA Rules, if done by Covered Entity, except that Business Associate may use or disclose Protected Health Information for its proper management and administration, data aggregation, and other activities specifically permitted by this BA Agreement.

#### **5. Indemnification**

Business Associate shall indemnify and hold harmless Covered Entity from and against any and all costs, expenses, claims, demands, causes of action, damages, attorneys' fees and

judgments that arise out of or that may be imposed upon, incurred by, or brought against Covered Entity to the extent directly resulting from a breach of this Agreement or any violation of the Privacy Rule or other applicable HIPAA regulations or HITECH Regulations by Business Associate. The indemnification obligations provided for in this Section will commence on the effective date of this Agreement and will survive its termination.

Covered Entity shall indemnify and hold harmless Business Associate from and against any and all costs, expenses, claims, demands, causes of action, damages, attorneys' fees and judgments that arise out of or are imposed upon, incurred by, or brought against Business Associate to the extent directly resulting from a breach of this Agreement or any violation of the Privacy Rule or other applicable HIPAA regulations or HITECH Regulations by Covered Entity. The indemnification obligations provided for in this Section will commence on the effective date of this Agreement and will survive its termination.

## 6. Survival and Termination

### (a) Term and Survival

Except as otherwise provided herein, the term of this BA Agreement shall coincide with the Service Agreement and shall be terminable in accordance with the termination provisions of the Service Agreement, or the date either party terminates for cause, as authorized in paragraph (b) of this Section, whichever is sooner.

### (b) Termination for Cause

Upon a party's knowledge of a material breach by the other, the non-breaching party shall provide written notice to the breaching party and may terminate this BA Agreement if the breaching party does not cure the breach or end the violation within 30 days of receipt of such notice.

### (c) Effect of Termination

- (i) Except as provided below in Subsection 6(c)(ii) of this BA Agreement, upon termination of this BA Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.
- (ii) In the event that Business Associate determines that it needs to retain Protected Health Information in order to Use or Disclose Protected Health Information for its own management and administration or to carry out its legal responsibilities, Business Associate may retain such Protected Health Information. Upon termination of this BA Agreement 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:

1. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return or destroy the remaining Protected Health Information that Business Associate still maintains in any form;
3. Continue to use appropriate safeguards to comply with Subpart C of 45 C.F.R. 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;
4. 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 out at Subsections 3(h)-(i) above which applied prior to termination; and
5. Return to Covered Entity or destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

- (d) Business Associate's obligations under this Section 6 shall survive the termination of this BA Agreement.

## **7. Interpretation and Amendment of this BA Agreement**

A regulatory reference in this BA Agreement to a section of the HIPAA Rules means the section as in effect or as amended. Any ambiguity or inconsistency in this BA Agreement shall be interpreted to permit compliance with the HIPAA Rules. This BA Agreement supersedes any and all prior representations, understandings, or agreements, written or oral, concerning the subject matter herein, including conflicting provisions of the Service Agreement. The parties hereto agree to negotiate in good faith to amend this BA Agreement from time to time as is necessary for compliance with the requirements of HIPAA or any other applicable law and for Business Associate to provide services to Covered Entity. However, no change, amendment, or modification of this BA Agreement shall be valid unless it is set forth in writing and signed by both parties. When provisions of this BA Agreement are different than those in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this BA Agreement shall control. Any ambiguity in this BA Agreement shall be resolved to permit the parties to comply with the HIPAA Rules.

## **8. No Third Party Rights/Independent Contractors**

The terms and conditions of this BA Agreement are intended for the sole benefit of Business Associate and Covered Entity and do not create any third party rights. The parties declare that they are independent contractors and not agents of each other, except as otherwise required by law or regulation.

**9. Notices**

Any notice required or permitted by this BA Agreement to be given or delivered shall be in writing and shall be deemed given or delivered if delivered in person, or sent by courier or expedited delivery service, or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile (if confirmed), to the address set forth below. Each party may change its address for purposes of this BA Agreement by written notice to the other party.

**10. Governing Law**

To the extent not preempted by federal law, the BA Agreement shall be governed and construed in accordance with the state laws of California, without regard to conflicts of law provisions that would require application of the law of another state.

**11. Binding Nature and Benefits**

This BA Agreement binds and benefits the parties, and their respective successors, and their permitted assigns.

**12. Severability**

Whenever possible, each provision of this BA Agreement shall be interpreted so as to be effective and valid under applicable law. If any provision of this BA Agreement should be prohibited or found invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the other of such provision or the remaining provisions of this BA Agreement; provided, however, that if any such invalid provision is material to an extent that a party would not have entered into the BA Agreement absent such provision, then that party may terminate the BA Agreement upon ninety (90) calendar days' prior written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this BA Agreement, effective \_May 5, 2015\_.

Covered Entity: **FDAC Employee Benefits Authority**

By: Jean D Moore Digitally signed by Jean D Moore  
DN: cn=Jean D Moore, o=FDAC EBA, ou,  
email=jmoore@alpinefire.org, c=US  
Date: 2015.05.14 14:27:10 -0700

Name and Title: Jean D Moore, Board President

Address: C/- Melissa Dixon, Administrator 1215 K Street, Suite 940

Sacramento, CA 95814

Facsimile: \_\_\_\_\_



Business Associate:

Employee Benefits Specialists, Inc., A California corporation

By: 

Name and Title: David Rhodes CEO

Address: \_\_\_\_\_

\_\_\_\_\_

Facsimile: \_\_\_\_\_



**MASTER APPLICATION SERVICE PROVIDER AGREEMENT**

This Master Application Service Provider Agreement is made as of 5/5/2015, (the "Effective Date"), between FDAC Employment Benefits Authority ("Customer"), with offices at 1215 K Street, Suite 940, Sacramento, CA 95814, and Employee Benefit Specialists, Inc. a California Corporation with principal offices at 5934 Gibraltar Drive Suite 206, Pleasanton, CA 94507 ("Vendor"). Customer and Vendor are sometimes referred to individually as a "Party" and together as the "Parties"

Customer wishes to utilize Workterra (the "Application") the EBS SaaS delivered software for employer benefit plan enrollment and administration and procure related services and Vendor wishes to provide such applications and services in accordance with this Agreement.

Therefore, in consideration of the mutual obligations set forth herein, Customer and Vendor agree as follows:

**1. APPLICATIONS**

1.1 Grant. Vendor grants to Customer a non-exclusive, royalty-free, world-wide, irrevocable, non-transferable (except as permitted hereunder) license for access and use of Workterra, the Application for the Term agreed upon herein, and from any Customer location.

1.2 Restrictions. Except as specified otherwise, Customer will not: (a) reproduce, duplicate, disseminate or copy the Application; (b) remove Vendor's proprietary rights notices; or (c) alter, modify, disassemble, decompile, reverse engineer or create derivative works from the Application.

**2. SERVICES**

2.1 Services Obligations. Customer agrees to procure and Vendor agrees to provide the Services described in this Agreement and any attached SOWs. Vendor shall engage in sufficient technology and staffing capacity planning to ensure that it has sufficient network and infrastructure support to provide the Services hereunder. Vendor shall continually improve its design and delivery of Services, and implement quality assurance processes and procedures necessary to perform the Services in accordance with industry standards or as further described herein.

2.2 Data Backup. Vendor shall maintain safeguards against the destruction, loss, and alterations of data in the possession of Vendor. At a minimum, Vendor shall perform, at no additional cost to Customer, (a) incremental daily backups, and (b) weekly full backups. In the event of data loss, Vendor shall regenerate the lost data, at Vendor's expense, as soon as practicable from the date Vendor is notified, or becomes aware, of the loss.

2.3 Service Levels. Vendor shall provide the Services Levels in this Agreement. In the event that a Service Level has not been met, Vendor shall: (a) perform a root-cause analysis to identify the cause of such failure; (b) promptly correct such failure within the timeframe set forth and (c) provide Customer with a written report detailing the cause of, and procedure for correcting, such failure within fourteen (14) days after such Service Level failure has occurred. In the event that the Services have not been provided in accordance with the applicable Service Levels, Customer shall receive the credits and payments from Vendor as identified in this Agreement. For convenience of reference, Exhibit A defines the Service Levels to be provided by Vendor.

**3. FEES and PAYMENT**

3.1 Price List. The fees and/or discounts for the Services are set forth in each attached SOW.

3.2 Fees and Invoices. Customer shall pay Vendor the fees for the Services set forth in each SOW. Vendor shall invoice Customer for Services at the end of the calendar month in which the Services are rendered and in any case no later than thirty (30) days following initial delivery or completion of the Services. All invoices must: (a) include sufficient detail to allow Customer to validate such invoice, and (b) be sent to the following address **1215 K Street, Suite 940, Sacramento, CA 95814** (which may be updated by Customer upon notice). Whenever an invoice includes time-and-materials Consulting Services Fees, the invoice must also include the names, skill levels and hours of the personnel performing the work.

3.3 Taxes. The fees shall be inclusive of all sales, use and other taxes related to the Services. Each Party shall be responsible for any personal property taxes on property it owns or leases, for franchise and privilege taxes on its business, and for taxes based on its net income or gross receipts.

3.4 Expenses. Vendor shall be responsible for all out of pocket expenses incurred under this Agreement. If Customer has agreed to reimburse Vendor for out of pocket expenses incurred by Vendor pursuant to its performance of Services under this Agreement (including without limitation travel-related expenses) those will be clearly outlined on the invoice.

3.5 Disputed Amounts. If any invoice is paid and subsequently disputed by Customer, Vendor shall investigate and issue a corrected invoice or a refund of any overpayment, as applicable, within thirty (30) days after receiving written notice from Customer.

#### 4. TERM AND TERMINATION

4.1 Term. This Agreement will commence on the Effective Date and will continue until June 30, 2018.

4.2 Renewal. Unless the Parties otherwise agree, Customer will have the right, but not the obligation, to renew. If no written notice has been received by EBS at least 60 days before the end of the term of this agreement it will be assumed that Customer will be continuing for a period of one year at a rate no more than 25% higher than the prior year. Any Statement of Work (SOW) will commence and be effective for the period of time specified in a SOW (each, a "SOW Term") until such SOW expires or terminates in accordance with this Section 4.

4.3 Termination for Convenience. Customer may at any time, for its own convenience and without cause, terminate this Agreement in whole or in part, or any SOW in whole or in part upon sixty (60) days prior written notice to Vendor and in accordance with this Section 4. All fees due through the end of the original term will be due and payable at the termination.

4.4 Termination for Insolvency; Vendor Change of Control. Notwithstanding anything to the contrary in this Agreement, either Party will have the right to immediately, with such written notice as such Party deems reasonable, terminate this Agreement in the event the other Party: (a) ceases to do business as a going concern; (b) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute (and if the proceeding is involuntary, it is not dismissed within sixty (60) days of its commencement); (c) becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority; (d) has wound up, dissolved or liquidated, voluntarily or otherwise; (e) makes a general assignment for the benefit of its creditors; or (e) takes any action authorizing or in furtherance of any of the foregoing.

4.5 Termination for Cause. Either Party (the "Non-Breaching Party") may, at its option, terminate this Agreement, in whole or in part, upon a breach or default of any provision of this Agreement by the other Party (the "Breaching Party"), if (a) the Non-Breaching Party gives written notice to the Breaching Party of its breach and (b) allows the Breaching Party thirty (30) days to either cure its breach or to initiate steps which the parties mutually agree will cure the breach (the "Cure Period"). If the Breaching Party fails to cure the breach or initiate the steps necessary to cure such breach within the Cure Period, the Non-Breaching Party may immediately terminate the Agreement by providing written notice to the Breaching Party in accordance with this Section 4, and the termination will be without penalty to the terminating party

4.6 Each Agreement Distinct. Termination of this Agreement will not terminate any other Agreement then in effect.

4.7 Effect of Termination. Upon termination of this Agreement Vendor shall provide Termination Assistance as described in Section 4.8, and upon either Customer's election to forego or upon the completion of any Termination Assistance, the following shall apply: (a) each Party shall destroy all Confidential Information and all other papers, materials and properties of the other Party related to the expiring or terminating Agreement or in total related to the terminating Agreement; (b) in the event that Customer terminates for convenience pursuant to Section 4.3 or Vendor terminates for cause then Customer will pay a termination fee in an amount equal to the amount that would have been paid for the remainder of the contract.; (c) Vendor shall refund to Customer any prepaid, unused fees related to the expiring or terminating Agreement and (d) except as otherwise set forth in this Agreement, Customer's rights to the SaaS Services will extinguish.

4.8 Termination Assistance. To the extent requested by Customer, for the period of time mutually agreed to in writing by the Parties (or for no more than twelve (12) months if the Parties fail to agree) and at the rates agreed, Vendor will continue to provide the Services provided by Vendor prior to such expiration or termination, and any new services requested by Customer that may be required for the Services to continue without interruption or adverse effect and to facilitate the orderly transfer of the Services to Customer or Customer's designee, as applicable (collectively, "Termination Assistance"), even if such Assistance extends beyond the expiration of the Term or the effective date of termination of this Agreement. The terms and conditions of such Termination Assistance shall be specified in a written Addendum to this agreement signed by both Parties. The provisions of this Agreement as supplemented by the Addendum will remain in effect for the agreed upon Termination Assistance period and will apply to all Termination Assistance services provided by Vendor during such period. At a minimum, Vendor will provide to Customer and any Customer designee all Customer Data, in a format reasonably agreed upon by both parties that Customer deems necessary to use the Customer Data or convert the Customer Data for use on another system without cost to Customer.

4.9 Survival of Obligations. Customer and Vendor's respective obligations hereunder which by their nature would continue beyond the termination, cancellation, or expiration of this Agreement, shall survive. This includes, by way of example but without limitation, the obligations provided in this Section 4 and the Sections with the following headings: "APPLICATIONS", "REPRESENTATIONS, WARRANTIES and COVENANTS", "INTELLECTUAL PROPERTY", "COMPLIANCE", "CONFIDENTIALITY", "INDEMNIFICATION" "TERMINATION ASSISTANCE" "EFFECT OF TERMINATION", "DEFAULT" and "LIMITATION OF LIABILITY".

## 5. RELATIONSHIP OF THE PARTIES

5.1 Independent Contractor Status of the Parties. The status of Vendor will be that of independent contractor, and none of Vendor's personnel will be deemed employees or agents of Customer. Vendor shall have control over the means, methods, techniques, sequences, and procedures for performing and coordinating the Services described in the Statement of Work ("SOW"). Customer shall have the right to control Vendor only insofar as the result of Vendors services rendered pursuant to this Agreement.

None of the terms set forth in this Agreement will be construed as creating a partnership, joint venture, agency, master-servant, employment, trust, or any other relationship between Customer and Vendor or any of their personnel. Vendor and its personnel are not eligible for, nor may they participate in, any employee benefit plans of Customer. Vendor is solely responsible for paying any and all taxes (including without limitation, social security, employment and income) required by any federal, state or local law or regulation pertaining to Vendor's personnel relating to this Agreement and making all required contributions to benefit plans pertaining to Vendor's personnel. Neither Vendor, nor Vendor's employees or any third persons employed by or contracted by Vendor to perform Services pursuant to this Agreement shall be entitled to workers' compensation benefits from Customer should Vendor or any of its employees or Contractors sustain an injury in the course of performing the Services specified in this Agreement. In addition, Vendor agrees to inform all personnel performing the Services that they are employees, agents or Contractors solely of Vendor, and are not eligible to any of Customer's employee benefit plans, incentive, compensation or other employee programs or policies.

5.2 Account Management; Other Personnel. Vendor shall designate an individual, acceptable to Customer, who shall be the primary point of contact for all Services provided hereunder and who shall be available to interact with Customer management personnel, on an as needed basis. Vendor agrees to honor Customer's reasonable request to remove any individual from the Customer account and replace such person with someone of suitable skill and experience.

5.3 Use of Contractors. Vendor may subcontract any portion of the Services to any Contractors, including Affiliates of Vendor, without Customer's prior consent as deemed necessary by Vendor. Vendor will be responsible for all actions taken by any of its Contractors and obligations performed by any of its Contractors to the same extent as if such actions were taken and obligations were performed by Vendor's employees.

5.4 Affiliates. All rights granted under this Agreement to Customer will extend to Affiliates and references to Customer shall include its Affiliates. Any Affiliate may execute a Statement of Work (SOW) hereunder and in such case, all obligations of, and references to, Customer in this Agreement shall instead refer to such Affiliate, and all rights and obligations outlined herein will apply to the Affiliate.

## 6. REPRESENTATIONS, WARRANTIES and COVENANTS

6.1 General. Vendor represents, warrants and covenants that: (a) it is a validly organized business entity in good standing in applicable business locations; (b) it shall possess during the term of this Agreement all necessary right, title, license and authority to enter into, perform its obligations under, and grant the licenses and other rights provided in this Agreement, including without limitation good and marketable title to Work Product; (c) Vendor has appropriate written policies and agreements with its employees, agents and Contractors to allow it to meet the terms of this Agreement, including without limitation the applicable provisions of Section 7 (Intellectual Property) and Section 9 (Confidentiality); (d) each Vendor signatory has authority to bind Vendor; (e) Vendor's performance of its obligations under this Agreement shall not conflict with any law, regulation, or other agreements to which Vendor is a party; and (f) as of the Effective Date, there are no actual, threatened or pending encumbrances, liens, litigation or claims that could have a material adverse effect on Vendor's ability to perform its obligations under this Agreement or on Customer's enjoyment of all of the rights granted Customer under this Agreement.

6.2 Applications and Work Product. Vendor represents, warrants and covenants that the Applications and Work Product, and all Updates and Enhancements thereto, and the medium upon which they may be recorded, are: (a) and the medium upon which they may be recorded, are free from defects in material or execution; (b) and all Updates and Enhancements thereto, are inspected by Vendor and Vendor will check for and eliminate any and all computer viruses or other destructive code using a regularly updated, industry-standard software package designed for such purpose (e.g., the most current version of Symantec Norton Antivirus) immediately prior to any delivery of Applications and Work Product to Customer; (c) are free of any viral "open source" that would force Customer's proprietary or Confidential Information into the public domain; and (d) will have forward and backward compatibility, with no degradation of performance, with respect to Updates, Enhancements, updates to current operating systems and standard commercial web browsers.

6.3 Services. Vendor represents warrants and covenants that the Services shall be performed by qualified personnel in a timely, professional manner and consistent with the prevailing standards of the information technology and software-as-a-service industries.

6.4 Applications, Work Product and Services. Vendor represents, warrants and covenants that the Applications, Work Product (as defined in section 7.1) and Services (and all revisions thereto): (a) , have been accurately, timely and completely documented; (b) will operate in conformance with all applicable Specifications and any other terms set forth in this Agreement; (c) will not infringe, misappropriate or otherwise violate any patent, copyright, trademark, service mark, trade secret or other intellectual property right of any third party or any other applicable statute, regulation or ordinance of a state or the United States; and (d) will have the capability and capacity to meet on-demand increases in use, throughput or Services.

6.5 Third Party Materials. Vendor represents, warrants and covenants that it shall maintain the Third Party Materials to operate in accordance with the Specifications, including without limitation: (a) maintaining hardware in good operating condition, subject to normal wear and tear; (b) undertaking repairs and preventive maintenance on hardware in accordance with the applicable hardware manufacturer's recommendations; and (c) performing Application and other software maintenance in accordance with the applicable Documentation or the third party software vendor's documentation and recommendations.

6.6 Remedies. In the event any Application, Work Product, Services or Third Party Material fails to satisfy any applicable representation, warranty or covenant, then within thirty (30) days after receiving notice from Customer, Vendor will promptly: (a) repair the Application, Work Product or Third Party Material or correct the applicable Services failure so that it conforms to these representations, warranties and covenants; (b) replace the Application, Work Product or Third Party Material so that it conforms to these representations, warranties and covenants.

6.7 Warranty Disclaimer. EXCEPT AS OTHERWISE AGREED IN THIS AGREEMENT, THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 7. INTELLECTUAL PROPERTY

7.1 Ownership of EBS Work Product. "Work Product" is defined as any and all completed or in-progress patentable or non-patentable inventions, all improvements, discoveries, technologies, computer programs, application programming interfaces, formulas, algorithms, systems (and all source, object code and compilers related to any of the foregoing), techniques, know-how, data, writings, compositions, content, literary properties, documents, designs, illustrations, processes, procedures, protocols, trade secrets and all other items, materials or other works, tangible and intangible, existing at the time of this Agreement and made or conceived by EBS, or its employees, agents or independent contractors, solely or jointly with others, and any such information or materials which (a) are produced in the course of providing the Applications and/or Services; or (b) are conceived of or made by EBS that are improvements, modifications, enhancements, updates, advances, changes, extensions, new versions or derivations of EBS's existing Work Product. EBS will retain all rights, title and interest in its Work Product, and any modifications and enhancements to the Work Product at all stages of development and upon completion, and all patents, copyrights, trademarks, service marks and other intellectual property rights in the Work Product, and nothing in this Agreement will be construed to give Customer any right, title or interest therein. Any jointly developed Work Product will be owned by EBS and it may use, license, modify or transfer such Work Product without permission by, or compensation to, Customer.

7.2 Customer's Obligations. Customer will not assign, license or otherwise transfer ownership, rights, title, or interest in the Work Product to any third party or allow any lien or other encumbrance to be placed on the Work Product. Customer will render all reasonably required assistance to EBS to protect EBS's right, title and interest in the Work Product. Customer warrants it has all power and authority to affect all assignments, transfers, and waivers provided herein.

## 8. COMPLIANCE

8.1 HIPAA and GLB. If, in the course of performing Services, Vendor gains access to, creates, maintains or transmits on behalf of Customer, or receives from Customer (inadvertently or otherwise) Protected Health Information, Electronic Protected Health Information or Nonpublic Personal Information, Vendor shall comply with all applicable laws, rules, regulations and policies regarding the security and confidentiality of such information, including without limitation, HIPAA, ARRA, HITECH, and GLBA and the rules, regulations and standards now or hereafter promulgated thereunder. Unless expressly included in the scope of any Services, Vendor agrees not to intentionally access any such information and to use its best efforts to avoid any unintended or accidental viewing or contact with any such information. If any such information is obtained by Vendor in the performance of any Services, Vendor shall maintain such information in strictest confidence and shall not disclose, divulge, use or commercially or otherwise

exploit any such information for any purpose or under any circumstance. In the event that Vendor, or its employees, agents or subcontractors, gain access to Protected Health Information, electronic protected health information or non-public personal information in the course of performing the Services pursuant to this Agreement. Vendor hereby acknowledges and agrees that it has been furnished a copy of Customer's policies regarding compliance with the requirements of the Health Insurance Portability and Accountability Act of 1995 ("HIPAA") and hereby agrees to comply in all respects with those policies regarding the use, disclosure, protection and reporting of unauthorized use of Personal Health Information. Vendor hereby acknowledges receipt of a copy of Customer's policies regarding compliance with HIPAA.

8.2 Laws. Vendor shall comply with all applicable federal, state, county, and local laws, orders, rules, ordinances, regulations, and codes (collectively "Laws") including, but not limited to, U.S. export controls (including economic sanctions and embargoes), and Vendor's obligations as an employer regarding the health, safety and payment of its employees. Vendor's compliance shall also include identifying and procuring the required permits, certificates, approvals, and inspections in Vendor's performance under this Agreement. Additionally, Vendor certifies and represents its compliance with the following federal laws, as applicable: Utilization of Small Business Concerns (FAR 52.219-8) (May 2004) (15 U.S.C. § 637(d)(2) and; Equal Opportunity (FAR 52.222-26) (Apr 2002) (E.O. 11246); Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (FAR 52.222-35) (Sep 2006) (38 U.S.C. § 4212); Affirmative Action for Workers with Disabilities (FAR 52.222-36) (June 1998) (29 U.S.C. § 793); Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR 52.222-39) (Dec 2004) (E.O. 13201); Service Contract Act of 1965, as Amended (FAR 52.222-41) (Jul 2005) (41 U.S.C. § 351 *et seq.*); Preference for Privately Owned U.S.-Flag Commercial Vessels (FAR 52.247-64) (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. § 2631); Affirmative Action Compliance (FAR 52.222-25) (Apr 1984) (41 C.F.R. 60-1 and 60-2); Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (FAR 52.209-5) (Dec 2001); Previous Contracts and Compliance Reports (FAR 52.222-22) (Feb 1999); and Compliance with Veterans' Employment Reporting Requirements (FAR 52.222-38) (Dec 2001) (38 U.S.C. § 4212(d)); Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (FAR 52.222-37) (Sep 2006). Vendor must promptly notify Customer of any change of status with regard to these certifications and representations. These certifications and representations are material statements of fact upon which Customer will rely with respect to this Agreement.

## 9. CONFIDENTIALITY

9.1 Confidentiality Obligations. From time to time, either party (the "Disclosing Party") may disclose or make available to the other party (the "Receiving Party"), whether orally or in physical form, confidential or proprietary information concerning the disclosing party and/or its technology, products, business, suppliers or services in connection with this Agreement (together, "Confidential Information"). Confidential Information means: (a) all Work Product; (b) all Customer Records; (c) all information relating to Customer and Vendor's businesses (which includes without limitation, current and future technologies, products, members, customers, suppliers, and related business, marketing, financial and strategic forecasts, plans and information; and (d) all other nonpublic materials, data or information which is marked "confidential" or which Vendor knows or should know is normally and reasonably considered confidential to either party. Each Party agrees that it will, during the term of this Agreement and thereafter (i) use Confidential Information belonging to the Disclosing Party solely to perform its obligations or exercise its rights under this Agreement; and (ii) take all reasonable precautions to ensure that it does not disclose Confidential Information belonging to the Disclosing Party to any third party (other than the Receiving Party's employees, agents and Contractors on a need-to-know basis who both Parties hereto agree to bind either contractually or by policy to obligations of nondisclosure and limited use at least as stringent as those contained herein) without first obtaining the Disclosing Party's written consent. All Confidential Information of a Party remains the sole and exclusive property of such Party. Upon request by the Disclosing Party, the Receiving Party will return or destroy all copies of any Confidential Information in its possession. The Receiving Party will be responsible for any breach of this Section 9 by its employees, agents and contractors.

9.2 Exclusions. Confidential Information will not include any information that one Party can establish by written evidence (a) was in the possession of such Party prior to the Effective Date so long as such Party did not acquire such information from a source which had a fiduciary, confidential or contractual duty to the other Party to

maintain such information as confidential; or (b) was at the time in question (whether at disclosure or thereafter) generally known by, or available to, the public through no fault of the other Party.

9.3 Required Disclosures. These confidentiality obligations will not restrict any disclosure required by order of a court or any government agency, provided that in the case of an order, the Party in receipt of such order gives prompt notice to the Party which is the subject of any such order (hereinafter the "Subject Party"), if allowed, and reasonably cooperates with the Subject Party, at Subject Party's reasonable request and expense, to resist such order or to obtain a protective order against disclosure.

## 10. INDEMNIFICATION and LIMITATION OF LIABILITY

10.1 Indemnification. Vendor hereby agrees to defend, indemnify and hold harmless Customer and its directors, officers and employees (collectively, the "Indemnitees"), from and against any and all liability claims, losses, damages, suits, fees, judgments, costs and expenses (collectively referred to as "Claims"), including attorneys' fees incurred in responding to such Claims, that the Indemnitees may suffer or incur arising out of or in connection with (a) either EBS' breach of warranty, negligence or willful misconduct; or (b) any allegation that the Indemnitees' use of the Applications or Services constitutes an infringement or violation of any patent, copyright, trade secret, trademark, service mark or other third party intellectual property right. The Customer will give prompt notice of any Claim to Vendor, and Vendor will defend the Customer at their request. Vendor may settle, at its expense, any Claim for which it is responsible under this Section 10. Customer has the right to employ counsel of its choice at its own expense and participate in the defense and/or settlement of any Claim Vendor.

10.2 Limitation of Liability. Neither party will be liable to the other for indirect, consequential, special, incidental, or punitive damages, even if such damages were foreseeable, provided that this exclusion will not apply to damages payable under EBS's indemnification obligations under this Section 10.

## 11. BUSINESS CONTINUITY MANAGEMENT

11.1 Contingency Plans. EBS will establish and maintain: (a) written business continuity plans for the Applications and Services and supporting facilities, (b) written disaster recovery plans for critical technology and systems infrastructure, and (c) proper risk controls to enable continued performance under this Agreement in the event of a Disaster ((a) through (c) above are collectively "Contingency Plans"). The Contingency Plans include, but are not limited to, advance procedures and information that are developed, compiled, certified and maintained in readiness for use in the event of a Disaster, which is focused on the core business processes, information technology systems, infrastructure, and related personnel. The term "Disaster" as used herein means an unanticipated incident or event causes a critical Application or material Service to be unavailable without any reasonable prediction for resumption, or that causes data loss, property damage or other business interruption without any reasonable prediction for recovery or such other period as determined by EBS in its sole discretion. However, unavailability of any Application or Service to Customer, or any business interruption of Customer that exceeds a period of \_\_\_\_\_ (2 business days) shall be deemed a Disaster under this section.

11.2 Notification of Disaster. EBS will notify Customer immediately of the occurrence of any Disaster that affects or could affect EBS's performance of the Services and report to Customer with respect to the effectiveness of its Contingency Plans. In the event of a Disaster, EBS will execute the applicable Contingency Plans.

11.3 SLAs. Any service level agreement commitments set forth in this Agreement, any Exhibit or any SOW will not apply during the first hour period beginning when a Disaster occurs.

## 12. INSURANCE

A. Types and Limits. Vendor at its sole cost and expense shall procure and maintain for the duration of this Agreement the following types and limits of insurance:



<u>Type</u>	<u>Limits</u>	<u>Scope</u>
Commercial General Liability and Property Damage	\$1,000,000 per occurrence	at least as broad as ISO CG 0001
Professional Errors and Omissions	\$1,000,000 per wrongful act	
Workers= Compensation	statutory limits	
Employers= Liability	\$1,000,000 per accident	
Loss of Customer Data and/or Data Breach	\$1,000,000 per occurrence	

B. Other Requirements. The general liability, property damage, automobile liability and customer data/data breach insurance furnished by Vendor shall name Customer as an additional insured and shall directly protect, as well as provide the defense for Customer, its officers, agents and employees as well as Vendor, and its agents, and employees, if any, from all suits, actions, damages, losses or claims of every type and description to which they may be subjected by reason of or resulting from Vendor=s operations in the performance of the Services pursuant to this Agreement, and all insurance policies shall so state. Said insurance shall also specifically cover the contractual liability of Vendor. Said insurance shall also specify that it acts as primary insurance and Customer=s insurance shall not contribute with Vendor=s insurance. If Vendor fails to maintain such insurance, Customer may declare a default in the performance of this Agreement and exercise the remedies specified in Section 4 of this Agreement.

C. Vendor shall be permissibly self insured or shall carry full workers= compensation coverage for all persons employed, either directly or through subcontractors, in carrying out the Services contemplated by this Agreement and in accordance with the Workers= Compensation Act contained in the Labor Code of the State of California. If Vendor fails to maintain such insurance, Customer may declare a default in the performance of this Agreement and exercise the remedies specified in Section 4 of this Agreement.

D. Vendor agrees to furnish a certificate or certificates substantiating the fact that it has taken out the insurance set forth above for the period covered by the Agreement and all endorsements substantiating coverage of Customer and its agents and employees as additional insureds. All insurance is to be placed with insurers with a current A.M. Best rating A:VII or better unless otherwise accepted in writing by Customer.

Each such certificate shall bear an endorsement precluding the cancellation or reduction in coverage of any policy covered by such certificate before the expiration of thirty (30) days after Customer shall receive notification of such cancellation or reduction.

### 13. MISCELLANEOUS

13.1 Assignment. Vendor may not assign any of its rights or delegate or subcontract any of its duties pursuant to this Agreement, without the prior written consent of Customer. Any attempted assignment without consent will be void. Notwithstanding anything to the contrary set forth in the Agreement, (i) Customer may, without Vendor's consent, assign the Agreement to a legal entity which is the successor, by sale, merger or otherwise, to all or substantially all of Customer's assets, and (ii) the transfer by sale, merger or otherwise of ownership interests in Customer, or any affiliate of Customer (including, but not limited to, Customer's parent) shall not be considered an assignment under the Agreement and shall not require the consent of the Vendor.

13.2 Entire Agreement. This writing and the documents incorporated herein by reference including Exhibit A, Service Level Agreement; Exhibit B, the HIPAA and GLBA Agreement; Exhibit C, the Workterra Security

Document; and Exhibit D, Statement of Work Number 1 (hereinafter the "SOW"); and Attachments A and B to the SOW represent the sole, entire, exclusive and integrated contract between the Parties concerning the Services, and supersedes all prior oral and/or written negotiations, representations or contracts. Each Party to this Agreement acknowledges that no representations or promises have been made by any party hereto which are not embodied herein, and that no other agreement or promise not contained in this Agreement or in the incorporated documents shall be valid or binding. This Agreement may be amended only by a subsequent written contract approved and executed by both Parties.

13.3 Amendments. Any amendment or modification to this Agreement will not be valid, enforceable, or binding on the Parties unless such amendment or modification (a) is in a writing signed by authorized representatives of both Parties, and (b) references the Agreement, and if applicable (c) identifies the specific sections contained therein which are amended or modified. Any terms or conditions varying from this Agreement on any order, invoice or other notification from either Party are not binding on the other Party unless expressly accepted in writing by the Party against whom enforcement is sought.

13.4 No Waiver of Rights. Any waiver at any time by either party of its rights as to a breach or default of this Agreement shall not be deemed to be a waiver as to any other breach or default. No payment by Customer to Vendor shall be considered or construed to be an approval or acceptance of any Work or a waiver of any breach or default.

13.5 Joint Participation. This Agreement was drafted with the joint participation of each Party and shall be construed to be neither against nor in favor of either Party, but rather in accordance with the fair meaning hereof.

13.6 Binding Effect. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

13.7 Headings. The paragraph and section headings used in this Agreement are for reference and convenience only and will not limit or control the interpretation of any term or provision of this Agreement.

13.8 Notices and Demands. Except as otherwise provided herein, any notices or demands required by law or under the terms of this Agreement shall be in writing and addressed as set forth below. Parties shall deliver such notices or demands by hand or by certified or registered mail; all notices are effectively given on the date of delivery. The Parties may change their notice contact information at any time by giving written notice to the other Party.

Notices to Customer:  
**FDAC Employment Benefits Authority**  
Attn: Melissa Dixon  
1215 K Street, Suite 940  
Sacramento, CA 95814

Notices to Vendor:  
Employee Benefit Specialists, Inc.  
Attn: Debbie Kulling  
5934 Gibraltar Drive #206  
Pleasanton, CA 94588

13.9 Severability. If any provision of this Agreement is found by a governmental authority or a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be interpreted so as to best accomplish the objectives of the original provision so as not to be invalid, illegal or unenforceable, or if no such interpretation is possible, such provision shall be severed here from and the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected by such provision.

13.10 Choice of Law; Venue. This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with and governed by the laws of the State of California, excluding its conflict of laws principles and excluding the Uniform Computer Information Transactions Act (UCITA) as may be enacted, amended, or modified by the various states. The jurisdictional venue for any proceedings involving this Agreement shall be held in San Francisco, California.

13.11 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California.


13.12 Counterparts. This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties.

Each Party is signing this Agreement on the date set forth below that Party's authorized representative's signature, representing that it has read the Agreement, understands it, and agrees to be bound by it.

**FDAC Employment Benefits Authority**

**EMPLOYEE BENEFIT SPECIALISTS, INC.**

By: **Jean D Moore**  
Digitally signed by Jean D Moore  
DN: cn=Jean D Moore, o=FDACEBA, ou,  
email=jmoore@alpinefire.org, c=US  
Date: 2015.05.14 14:22:40 -0700  
\_\_\_\_\_  
(Authorized Signature)

By:   
\_\_\_\_\_  
(Authorized Signature)

Name: **Jean D Moore**  
\_\_\_\_\_  
(Print or Type)

Name: **David Rhodes**  
\_\_\_\_\_  
(Print or Type)

Title: **Board President**  
\_\_\_\_\_

Title: **CEO**  
\_\_\_\_\_

Date: **5/5/2015**  
\_\_\_\_\_

Date: **5/5/2015**  
\_\_\_\_\_

**EXHIBIT A**  
**SERVICE LEVEL AGREEMENT**

During the term of this Agreement, Vendor will use commercially reasonable efforts to make the SaaS Services available twenty-four (24) hours a day, seven (7) days a week, at least ninety-nine point five percent (99.5%) of the time as measured on a monthly basis, excluding Excused Downtime (“Availability Guarantee”).

- (a) Excused Downtime. “Excused Downtime” means down time to perform Scheduled Maintenance, down time to perform maintenance or support services with respect to any applicable software or hardware or other separate written agreement between the parties and downtime caused by circumstances beyond Vendor’s reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Vendor employees, agents or Contractors), computer or telecommunications failures or delays involving hardware or software not within Vendor’s possession or control, and network intrusions or denial of service attacks (other than those involving Vendor employees, agents or Contractors).
- (b) Scheduled Maintenance. “Scheduled Maintenance” means any scheduled outages or down-time for maintenance, upgrades, enhancements or changes to the website. Vendor shall provide at least 2 days’ notice of any scheduled maintenance.
- (c) Notification. Vendor will provide a generic notification to service users when the services are unavailable because of maintenance. All emergency outages will be communicated to Customer as soon as reasonably possible. In addition, Vendor will provide proactive notification of identified technical issues which may result in Service Interruptions, with daily status updates of status and fixes. Vendor shall maintain and furnish to Customer within forty-eight (48) hours of a Customer request, detailed explanations of unexpected Service Interruptions, including the root cause, total outage duration and measures being take to prevent similar Service Interruptions in the future.
- (d) Service Interruption Management. Vendor is responsible for managing Service Interruptions that are within Vendor’s control, that are discovered either by Customer or by Vendor. Customer will notify Vendor’s dedicated Account Manager of a Service Interruption during normal business hours (8:00 AM to 5:00 PT). Customer can also notify Vendor during off hours via emergency contact information that will be provided and updated as necessary by Vendor. Once Vendor becomes aware of a Service Interruption, Vendor will use commercially reasonable efforts to resolve the Service Interruption within the target turnaround time indicated for its priority level (as outlined in the table below) and to provide reasonable periodic status reports regarding Service Interruption resolution.
- (e) Service Level Remedies. Vendor will provide monthly reports of Service Interruptions and occurrences by the 5<sup>th</sup> day of the following month. In the event Service Interruptions occur so that Vendor is unable to provide the availability percentages noted below in any given calendar month, Customer shall receive a cash rebate equal to the corresponding percentage noted below (each, a “Service Credit”) to be paid within thirty (30) days. The parties may mutually agree to apply such accrued Service Credits to a future purchase or amount owing, however, Customer is under no obligation to do so. These Service Credits represent negotiated amounts on the basis of reduced performance of service levels and shall not be deemed or construed as a measure of damages.
- (f) Availability Percentage Measurement. Vendor will have failed to meet the foregoing Availability Guarantee only if the SaaS Services fail to achieve the 99.5% availability described above (less Excused Downtime), as measured over the period of a given calendar month, in accordance with the following formula:

$$a = \frac{[(b - c) - d] \times 100}{b - c}$$

“a” = the actual percentage of the software availability in such month;

“b” = the total number of hours in such month;

“c” = the total number of hours of Excused Downtime in such month; and

“d” = the total number of hours that the SaaS Services is not available in such month, less any Excused Downtime.

**Availability Percentage**

Over 95% but below 99.5%

Over 90% but below or equal to 95.0%

90.0% or below

**Service Credit**

3% of monthly fee

5% of monthly fee

10% of monthly fee

- (g) **Telephone Support.** Vendor shall make available telephone support services to respond to Customer inquiries regarding the SaaS Services or any part thereof (“Telephone Support Services”). Telephone Support Services shall be available from the Vendor at a minimum, between the hours of 8:00 a.m. and 5:00 p.m., PT, Monday through Friday (excluding holidays listed in the Attachments to each SOW).
- (h) Vendor will use priority categories to provide a consistent classification of Service Interruptions, which allows for better communication with Customer regarding the nature of the service interruption. Vendor will assign an appropriate priority level for each Service Interruption.

Priority	Description	Response Time	Resolution/ Workaround
Urgent	Highest priority. Used for Service Interruptions, within Vendor’s control, where the end user is unable to access or use the SaaS Services or when significant and substantial adverse operational impact occurs preventing any useful work from being done.	90 minutes or less	six (6) hours
High	Used for Service Interruptions, within Vendor’s control, where the end user’s production use of the SaaS Services is severely impaired or degraded preventing major functions from being performed.	180 minutes or less	One (1) business day
Medium	Used for Service Interruptions, within Vendor’s control, where the end user’s production use of an important (but not critical or essential) function of the SaaS Services is disabled or impaired.	300 minutes or less	three (3) business days
Low	Used for all other Service Interruptions, within Vendor’s control. Indicates that the Service Interruption causes minor adverse impact to end user’s use of the SaaS Services.	24 hours or less	As Mutually agreed to by the parties.

**Response Time** means the time from which Customer places the call or email until Vendor calls back.

**Resolution/Workaround Time** means the time from which Customer reports the problem until Vendor diagnoses the issue and provides a workaround.

**Guarantee of response to Critical Issues.** Vendor agrees that in the event Customer calls to identify a critical issue, that Vendor shall put forth its best efforts to resolve the critical issue with minimum impact on Customer. In addition, Vendor will immediately escalate each of Customer’s critical issues to Vendor’s Executive management, who shall provide twice daily updates to Customer’s senior IS executive until the issue is resolved. In the event that a critical issue is not resolved within 24 hours, Vendor agrees that a senior member of its Office of the President shall update Customer’s Chief Executive Officer or designee daily until the problem is resolved.

- (j) **Service Interruption Non-compliance.** If, in any given month during the Term of the Agreement, Vendor is Noncompliant on one occasion in connection with a reported problem of Priority Urgent, or two (2) occasions in connection with a reported problem of Priority High, or three (3) or more occasions in connection with a reported problem of Priority Medium or Priority Low, then Vendor, after receiving notification of non-compliance by Customer, will immediately refund to Customer in the form of a check, an amount equal to five percent (5%) of Customer’s monthly Fee to be paid within 45 days.

“Noncompliant” or “Noncompliance” as such term is used herein, shall mean the occurrence of any one or more of the following with respect to any single reported problem: (i) Vendor’s response time with respect to a reported problem exceeds the response time listed in the above table; or (ii) Vendor fails to assign the

appropriate support personnel to address the reported problem and/or fails to provide Customer with an action plan detailing the process by which Vendor will approach resolution of the reported problem; provided, however, that if the parties mutually agree in writing that resolution will require more time, Vendor and Customer will mutually agree in writing to a later period of time for resolution and Vendor will thereafter be subject to such later deadline for purposes of determining Noncompliance.

**EXHIBIT B  
HIPAA and GLBA**

The parties hereby agree as follows:

**1. DEFINITIONS**

1.1 All capitalized terms used in this Exhibit not otherwise defined in this Exhibit or in the Agreement have the meanings established for purposes of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively, "HIPAA") and ARRA, as each is amended from time to time. To the extent a term is defined in both the Agreement and in this Exhibit, or in HIPAA or ARRA, the definition in this Exhibit, or in HIPAA or ARRA, shall govern.

1.2 "Affiliate" as used in this Exhibit, means any subsidiary of Customer.

1.3 "ARRA" means Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions (hereinafter the "HITECH" provisions) of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§17921-17954, and any and all references in this Exhibit to sections of ARRA shall be deemed to include all associated existing and future implementing regulations, when and as each is effective.

1.4 "Breach" means the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exceptions set forth, in 45 C.F.R. 164.402.

1.5 "Compliance Date" means, in each case, the date by which compliance is required under the referenced provision of ARRA and/or its implementing regulations, as applicable; provided that, in any case for which that date occurs prior to the effective date of this Exhibit, the Compliance Date shall mean that effective date of this Exhibit.

1.6 "Electronic Protected Health Information" ("ePHI") means PHI as defined in Section 1.7 that is transmitted or maintained in electronic media.

1.7 "PHI" means Protected Health Information, as defined in 45 C.F.R. § 160.103, and is limited to the Protected Health Information received from, or received or created on behalf of, Customer (for itself and/or applicable Covered Entity customers) by Vendor pursuant to performance of the Services.

1.8 "Privacy Rule" means the federal privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, codified at 45 C.F.R. Parts 160 and 164 (Subparts A & E).

1.9 "Security Rule" means the federal security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, codified at 45 C.F.R. Parts 160 and 164 (Subparts A & C).

1.10 "Services" as used in this Exhibit, means, to the extent and only to the extent they involve the creation, use or disclosure of PHI, the services provided by Vendor to Customer under the Agreement.

**2. RESPONSIBILITIES OF VENDOR**

With regard to its use and/or disclosure of PHI, Vendor agrees to:

2.1 use and/or disclose PHI only as necessary to provide the Services, as permitted or required by this Exhibit, and in compliance with each applicable requirement of 45 C.F.R. § 164.504(e) or as otherwise Required by Law.



2.2 implement and use appropriate administrative, physical and technical safeguards to: (i) prevent use or disclosure of PHI other than as permitted or required by this Exhibit; (ii) reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that Vendor creates, receives, maintains, or transmits on behalf of Customer; and (iii) as of the Compliance Date of 42 U.S.C. § 17931, comply with the Security Rule requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316, including at a minimum, but in any event not limited to, those safeguards set forth in Security document. For the avoidance of doubt the requirements set forth in Security document, do not limit in any way whatsoever Vendor's obligations under this Section 2.2.

2.3 without unreasonable delay, and in any event on or before twenty-four (24) hours after its discovery by Vendor, report to Customer: (i) any use or disclosure of PHI not provided for by this Exhibit of which it becomes aware in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(C); and/or (ii) any Security Incident of which Vendor becomes aware in accordance with 45 C.F.R. § 164.314(a)(2)(C).

2.4 without unreasonable delay, and in any event on or before twenty-four (24) hours after its Discovery by Vendor, notify Customer of any incident that involves an unauthorized acquisition, access, use, or disclosure of PHI, even if Vendor believes the incident will not rise to the level of a Breach. The notification shall include, to the extent possible, and shall be supplemented on an ongoing basis with: (i) the identification of all individuals whose Unsecured PHI was or is believed to have been involved; (ii) all other information reasonably requested by Customer to enable Customer to perform and document a risk assessment in accordance with 45 C.F.R. Part 164 subpart D with respect to the incident to determine whether a Breach of Unsecured PHI occurred; and (iii) all other information reasonably necessary to provide notice to the applicable Covered Entities, individuals, HHS and/or the media, all in accordance with the data breach notification requirements set forth in 42 U.S.C. § 17932 and 45 C.F.R. Parts 160 & 164 subparts A, D, & E as of their respective Compliance Dates. Notwithstanding the foregoing, in Customer's sole discretion and in accordance with its directions, Vendor shall conduct, or pay the costs of conducting, an investigation of any incident required to be reported under this Section 2.4 and shall provide and/or pay the costs of providing, the required notices as set forth in this Section 2.4.

2.5 require all of its subcontractors and agents that create, receive, maintain, or transmit PHI to agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Vendor; including but not limited to the extent that Vendor provides ePHI to a subcontractor or agent, it shall require the subcontractor or agent to implement reasonable and appropriate safeguards to protect the ePHI consistent with the requirements of this Exhibit and including, at a minimum, compliance with the requirements of Section 2.4.

2.6 make available its internal practices, books, and records relating to the use and disclosure of PHI to the Secretary for purposes of determining the applicable Covered Entity's compliance with the Privacy Rule.

2.7 document, and within thirty (30) days after receiving a written request from Customer, make available to Customer information necessary for Customer or its applicable Covered Entity customer to make an accounting of disclosures of PHI about an Individual or, when and as directed by Customer, make that information available directly to an Individual, all in accordance with 45 C.F.R. § 164.528 and, as of its Compliance Date, in accordance with the requirements for accounting for disclosures made through an Electronic Health Record in 42 U.S.C. 17935(c).

2.8 provide access to Customer, within thirty (30) days after receiving a written request from Customer, to PHI in a Designated Record Set about an Individual, or when and as directed by Customer, provide that access directly to an Individual, all in accordance with the requirements of 45 C.F.R. § 164.524.

2.9 notwithstanding Section 2.8, in the event that Vendor in connection with the Services uses or maintains an Electronic Health Record of PHI of or about an Individual, then Vendor shall provide an electronic copy (at the request of Customer, and in the reasonable time and manner requested by Customer) of the PHI, to Customer or, when and as directed by Customer, directly to an individual or a third party designated by the Individual, all in accordance with 42 U.S.C. § 17935(e) as of its Compliance Date.

2.10 to the extent that the PHI in Vendor's possession constitutes a Designated Record Set, make available, within thirty (30) days after a written request by Customer, PHI for amendment and incorporate any amendments to the PHI as directed by Customer, all in accordance with 45 C.F.R. § 164.526.

2.11 accommodate reasonable requests for confidential communications in accordance with 45 C.F.R. § 164.522(b), as directed by Customer or, if applicable, as directed by the Individual to whom the PHI relates.

2.12 notify Customer in writing within three (3) days after Vendor's receipt directly from an Individual of any request for an accounting of disclosures, access to, or amendment of PHI or for confidential communications as contemplated in Sections 2.7-2.11.

2.13 request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure; provided, that Vendor shall comply with 42 U.S.C. § 17935(b) as of its Compliance Date.

2.14 not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 42 U.S.C. § 17935(d) as of its Compliance Date.

2.15 not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a) as of its Compliance Date.

2.16 not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b) as of its Compliance Date.

2.17 mitigate, to the extent practicable, any harmful effect that is known to Vendor of a use or disclosure of PHI by Vendor that is not permitted by the requirements of this Exhibit.

2.18 comply with all applicable federal, state and local laws and regulations.

2.19 not use, transfer, transmit, or otherwise send or make available, any PHI outside of the geographic confines of the United States of America without Customer's advance written consent.

2.20 Government Program Requirements. To the extent that Vendor receives, uses or discloses PHI pertaining to individuals enrolled in managed care plans through which Customer or one or more of its affiliates participate in government funded health care programs, receipt use and disclosure of the PHI pertaining to those individuals shall comply with the applicable program requirements.

2.21 Privacy and Safeguards for NPI. Vendor understands and acknowledges that to the extent it is a nonaffiliated third party under GLBA that creates or receives NPI from or on behalf of Customer or an Affiliate, Vendor and its authorized representatives: (i) shall not use or disclose NPI for any purpose other than to perform its obligations under the Agreement; (ii) shall implement appropriate administrative, technical, and physical safeguards designed to ensure the security and confidentiality of the NPI, protect against any anticipated threats or hazards to the security or integrity of the NPI and protect against unauthorized access to or use of the NPI that could result in substantial harm or inconvenience to any consumer; and (iii) shall, for as long as Vendor has NPI, provide and maintain appropriate safeguards for the NPI in compliance with this Exhibit and the GLBA.

### **3. OTHER PERMITTED USES AND DISCLOSURES OF PHI**

Unless otherwise limited in this Exhibit, in addition to any other uses and/or disclosures permitted or required by this Exhibit, Vendor may use and disclose to third parties the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of Vendor, provided that any third party to which Contractors discloses PHI for those purposes provides written assurances in advance that: (i) the information will be held confidentially and used or further disclosed only as Required by Law; (ii) the information will be used only for the

purpose for which it was disclosed to the third party; and (iii) the third party promptly will notify Vendor of any instances of which it becomes aware in which the confidentiality of the information has been breached.

#### **4. TERMINATION AND COOPERATION**

4.1 Termination. Upon Customer's knowledge of a pattern or practice of Vendor that constitutes a material breach or violation of this Exhibit then Customer shall provide written notice of the breach or violation to Vendor that specifies the nature of the breach or violation. Vendor must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. If Vendor fails to cure the breach or end the violation within the specified timeframe, Customer may terminate this Exhibit and the Agreement. Customer also may terminate this Exhibit and the Agreement to the extent that any of Customer's applicable Covered Entity customers terminates its agreement with Customer.

4.2 Effect of Termination or Expiration. Within thirty (30) days after the expiration or termination for any reason (or to any extent) of the Agreement and/or this Exhibit, Vendor shall destroy all applicable PHI, if feasible to do so, including all applicable PHI in possession of Vendor's agents or subcontractors. To the extent destruction of the PHI is not feasible, Vendor shall notify Customer in writing of the reasons destruction is not feasible and, if Customer agrees, may retain the PHI subject to this Section 4.2. Under any circumstances, Vendor shall extend any and all protections, limitations and restrictions contained in this Exhibit to Vendor's use and/or disclosure of any applicable PHI retained after the expiration or termination (to any extent) of the Agreement and/or this Exhibit, and shall limit any further uses and/or disclosures solely to the purposes that make destruction of the PHI infeasible.

4.3 Cooperation. Each Party shall cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

#### **5. MISCELLANEOUS**

5.1 Contradictory Terms; Construction of Terms. Any other provision of the Agreement that is directly contradictory to one or more terms of this Exhibit ("Contradictory Term") shall be superseded by the terms of this Exhibit to the extent and only to the extent of the contradiction, only for the purpose of the applicable Covered Entity's and Customer's compliance with HIPAA and ARRA, and only to the extent reasonably impossible to comply with both the Contradictory Term and the terms of this Exhibit. The terms of this Exhibit to the extent they are unclear shall be construed to allow for compliance by EBS, Inc. with HIPAA, ARRA and GLBA.

5.2 No Third Party Beneficiaries. Nothing in this Exhibit shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

5.3 Independent Contractor. Vendor and Customer are and shall remain independent contractors throughout the term. Nothing in this Exhibit or otherwise in the Agreement shall be construed to constitute Vendor and Customer as partners, joint ventures, agents or anything other than independent contractors.



## STATEMENT OF WORK NUMBER 1

This is SOW Number 1 of the Master Application Service Provider Agreement between **FDAC Employment Benefits Authority** ("Client") and **Employee Benefit Specialists, Inc. (EBS)** ("Vendor") dated 5/5/2015 . All capitalized terms used herein, but not defined herein, will have the meanings set forth in the Agreement. Unless expressly modified herein, all terms in the Agreement shall remain unchanged and in full force and effect. If there is a conflict between the Agreement and this SOW, the SOW will prevail.

1. **SOW TERM.** Vendor will provide the Services described in this SOW beginning on May 5, 2015 until to June 30, 2018.
2. **APPLICATIONS.** The Applications included in the scope of this SOW are as follows: WORKTERRA
3. **SCOPE AND DESCRIPTION OF SERVICES.** The Services included in the scope of this SOW are as follows:

### A. Implementation services

An implementation timeline outlining a 90 day implementation period will be created and dates agreed upon by both parties for deliverables and milestones necessary for the configuration of WORKTERRA, data uploads, vendor and employer file configuration, testing and other information exchange necessary to meet the requirements to be operational by the Client designated go live date of July 1, 2015. Operational for purposes of this SOW means that Client management and employees will be able to enroll and change benefit elections for plans specified in this SOW.

During this implementation period, Vendor will provide Client regular updates regarding status of timeline milestones to meet the above dates. A minimum of one call per week with the designated implementation team of Client and EBS will be required.

### B. SaaS services

#### Overview of Functional Requirements

WORKTERRA features include but are not limited to:

- Web-based online enrollment tool available for open enrollment and year round updates
- Employee self-services
- Multiple carrier elections
- Site configuration at the employer level
- Easy-to-use HR administrative interface to perform basic functions
- Robust reporting features

#### Support Services

Support Services will include:

- Account management
- Implementation configuration of WORKTERRA for all updates and changes to plans, rates, rules etc.
- Creation and testing of output files to vendors, clients, etc.
- Ongoing training for new features and functions

Client's administration team will have an account manager assigned to be their main point of contact. The account manager's work in a team so there will be always be a knowledgeable back up for days when the

main account manager is out of the office. In addition, administrators for each of the administrative services will be assigned (example Section 125, billing, COBRA). A contact list for all administration personnel assigned to Client will be provided to Client and maintained by EBS. The account management and administration team will be available 8am – 5pm Pacific Monday through Friday except for listed holidays.

Employees of Client will be able to call EBS for WORKTERRA assistance 8am to 5pm Pacific Time Monday through Friday except for listed holidays (see Attachment B). In addition employees can call with questions about other accounts related to EBS services being offered such as HRA, FSA, 132, Retiree Benefits, LOA billing, COBRA account etc. Contractor offers web access to flex, transit, COBRA and retiree billing account information and a toll-free IVR system (IVR for flex only) that employees can access 24 hours a day, 7 days a week. Client service is also available via e-mail and any correspondence from Contractor will be received from 8 am to 5 pm Pacific. All voicemails left and e-mails received after hours will be reviewed the next business day.

In addition EBS can provide administration services including (see Attachment A for pricing):

1. Administration services for:
  - a. Section 125 and or Section 132
  - b. COBRA
  - c. Consolidated billing.
  - d. Retiree Administration
  - e. Qualifying event administration
  - f. EOJ administration
  - g. Fulfillment
  - h. QMSO administration
  - i. Dependent Audit
  - j. Call Center

4. FEES. In exchange for the Services listed in this SOW, Client shall pay vendor the fees outlined in Attachment A of this SOW at either a fixed-bid or time-and-materials basis as applicable.

Fees for any service not specifically outlined herein will be quoted upon request. Unanticipated loads, expedited services or other that requires additional services provided by EBS will quoted upon request. The fees attached are guaranteed for a period of 3 years from the execution of this SOW.

## 5. SCOPE

Vendor will provide a software tool called WORKTERRA in a SaaS model that Client will utilize for the enrollment and eligibility management of the listed benefit plans. WORKTERRA system will provide Client with an online system to update all status and enrollment information necessary for the enrollment and termination of employees and eligible dependents into the covered Plans. Client personnel will have varying levels of access to view all current coverage election and/or enter change information on a daily basis.

Optional functionality:

- **Inbound on-going Demographic File Interface** – Client’s system will integrate with EBS via files to create a single key environment. The Client will key information for new hires, terminations, leaves etc. into their payroll/HRIS system, as they always do, and that information will be submitted via file from the Client’s system to EBS. Files will be loaded on a scheduled basis into WORKTERRA.
- **Employee Self Service** – Online enrollment access for employees to make annual enrollment changes, new hire elections, qualifying event changes, etc. through a web based enrollment system call WORKTERRA.
- **Email Notification Module** – Module within WORKTERRA that sends emails out to employees notifying the employee of plan changes, enrollment changes, enrollment approval or rejections, etc.
- **Payroll Interface** - EBS will integrate with the Client’s systems via files to create a single enrollment change environment. The Client and/or the employee will key enrollment changes into WORKTERRA that result in payroll

deduction changes that will be exported and sent to the Client for file to be keyed in or load into the Client's payroll/HRIS system.

In addition EBS can provide administration services including (see Attachment A for pricing):

a. Consolidated Billing –

Once per month on a date agreed upon during the implementation process EBS will submit an electronic billing statement to each Agency or Retiree that includes the information needed for the proper and timely payment of vendor bills. Each Agency will submit payment according to the billing statement to EBS within 14 days of receipt. EBS will record the payments and forward to listed vendors with required payment detail within 5 business days of receipt of all funds and information. EBS will set up a Reserve Account which can be used to advance payments if an Agency has not submitted their payment by the required due date. The full scope of the Reserve Account is found in Section 6.

b. COBRA & Retiree Administration –

EBS will forward COBRA qualifying event or Retiree coverage letters to qualified beneficiaries within 10 days of notice from Client. Notice from Client must be in agreed upon format, either through integration files or written notice to EBS and must contain all information necessary for EBS to process the QE letters. Qualified beneficiaries and Retirees will respond directly to EBS, EBS will enroll them in their benefits through WORKTERRA. Eligibility will be forwarded to vendors through the regularly scheduled electronic files at least once per week. EBS will forward billing coupons to the participants and receive payments either in the form of a check or ACH. All payments will be recorded upon receipt and will be viewable by Client management and the employee (participant). Payments for coverage will be forwarded to carriers with required payment detail along with active premium payments once per month. Note EBS does not forward partial payments or its own funds for the payment of premiums. Client and participants can view enrollment information, payment details and download copies of correspondence using the SaaS tools.

c. San Francisco HRA benefit administration –

The City of San Francisco has passed legislation that includes specific administrative requirements for HRA's, and EBS offers services to answer those specific requirements. EBS will provide each employee with a statement after each contribution is deposited to their account on a quarterly basis. Claims are adjudicated and reimbursements processed daily (Monday through Friday except holidays). Participants can access account information online and through a toll free IVR. Employer can view account information and download reports on demand through online tool. Reimbursements are sent via check or debit card. EBS does not forward its own funds for the payment of claims. Any termination will be sent to EBS via email and or through the regular integration files with Workterra and EBS will send COBRA notices within 10 business days of the full and complete information.

d. Call Center -

EBS offers varying levels of call center support. Enrollment assistance requires an additional charge.

Year Round Enrollment Assistance:

Employees can call EBS' call center from 8am to 5pm Pacific Monday through Friday except for listed holidays (see Attachment B) to speak with a call center representative to assist with their enrollment. The call center representative will answer questions regarding plan options, costs, and contributions. The call center will not answer calls regarding coverage for specific treatments, drugs or conditions; these will be forwarded to the vendor. The call center representative can enter all enrollment elections into WORKTERRA for the employee. Mailed confirmation statements are available for an additional charge (see attached fee schedule).

Open Enrollment Only Enrollment Assistance: Employees of Client can call EBS' call center from 8am to 5pm Pacific Monday through Friday except for listed holidays (see Attachment B) to speak with a call center representative to assist with their enrollment. The call center representative will answer questions regarding plan options, costs, and contributions. The call center will not answer calls regarding coverage for specific treatments, drugs or conditions; these will be forwarded to the vendor. The call center representative can

enter all enrollment elections into WORKTERRA for the employee. Mailed confirmation statements are available for an additional charge (see attached fee schedule).

Direct Dial numbers are available for an additional charge which will be quoted upon request and the call center greeting on the direct dial is specific to the Client.

e. Section 125 Administration

EBS offers full Section 125 administration. We will provide plan documents and one master SPD, one discrimination test per year, daily reimbursements via check, direct deposit, and debit card, hardcopy, fax and electronic claim submission and online and toll free IVR access to balance and claim information. Reports are sent to the Client monthly and they can access and run reports on demand.

Transit and Parking administration can be added for an additional fee. The debit card can be used for all 4 accounts (medical reimbursement, dependent care, transit and parking.) Note EBS will not forward its own funds for the payment of claims.

f. Qualifying Event Administration

WORKTERRA allows for any number of qualifying events to be configured in the system that can be used by either or both Client and the employee as per the Client preference. It is an easy to use tool for the employer to see all pending changes that have been entered into the system by the employees and update each record according to the verification supplied. The system will prompt the employees to submit the paperwork required and even allows employees to scan and upload their documents to their record for easy review by the Client. EBS can provide the administration and review of required documents, and update the system based on established rules for verifying actions.

g. Student Verification

EBS will send out letters at least 2 times a year to all employees with college age dependents on their coverage. The letter will outline the information required to verify the student status of the dependent and the deadline for submitting. A second letter will be sent out to those who do not respond to remind them of the deadline. All dependents that are not verified by the deadline are terminated and a COBRA letter is sent if EBS is providing COBRA administration.

h. EOI Processing Administration

WORKTERRA can be configured to display the guarantee and qualified issue amounts with the corresponding costs on the enrollment screens for the employees and force up EOI forms with instructions before the employee can leave the election page. The system includes a very easy to use tool to review all elections that are for amounts over the Guaranteed Issuance limits and update them as per the carrier response. EBS can provide a service to receive the carrier information and provide the updates to the coverage for the Client and follow up with the employees to encourage timely responses.

i. Direct Billing for LOA

EBS will send billing coupons to covered employees reported as leave participants for the period of eligible leave of absence. Funds will be forwarded to all vendors along with consolidated billing amounts for actives, retirees, and COBRA participants. Leave of absence participants who require a direct bill will be reported to EBS by Client, EBS will create billing coupons for the anticipated period of the reported leave and forward to the participant. The participant will forward payment to EBS based on the coupons. Premiums not paid within the required payment period (30 day grace) will result in termination of the coverage and a COBRA notice will be created and sent if EBS is providing COBRA administration. EBS will not forward partial payments to the vendors, nor will we use EBS funds for any premium payments. Direct Billing process for Client will be administered as a manual process on a per event basis.

j. Qualified Medical Support Order Assistance (QMSO) - EBS will receive forms for benefit eligible employees from Client and complete with the required data (ex. employee employment status, eligibility for medical coverage, premium costs) forward forms and reach out to the employee via mailed letter first class postage to

notify them of the change to their enrollment and costs, and include a confirmation statement and update WORKTERRA for the enrollment and to note the QMSO which will automatically disallow the employee for cancelling enrollment for themselves and/or their dependent(s). The confirmation statements will be accompanied by a letter up to 1 page from Client.

- k. Fulfillment – EBS will provide for the printing, collating, labeling, and first class mailing of hard copy employee benefit communication materials such as enrollment materials or compliance notifications. Price quoted based on scope of services required. Electronic copies of these materials can be housed on WORKTERRA at no additional cost.

#### 6. RESERVE ACCOUNT

As an agent of the Client, EBS will collect all contributions payable by employees and/or member agencies of Client for coverage according to the terms of the Plan on a monthly basis and deposit such contributions into the Reserve Account, to be held and applied on the express terms set forth herein. EBS hereby agrees to serve as agent on behalf of the Client with respect to such account upon the terms and conditions set forth in this Section. It is agreed that the Reserve Account shall be held for the account and benefit of the Client. On a monthly basis, EBS shall deposit into the Reserve Account all contributions received in any month, to be held in such account by EBS on the express terms and conditions set forth herein.

- a) EBS is hereby expressly authorized to act as agent of the Client in making deposits into and withdrawals from said account upon the approval of the Client. In order to avoid insufficient Contributions to pay all premiums when due the Client has deposited into the Reserve Account a minimum balance of \$120,000.00 (the "Minimum Balance"). The Client may deposit funds into the account from time to time to maintain such required Minimum Balance. If at any time amounts on deposit in the Reserve Account together with the Minimum Balance are insufficient to pay all premiums when due, then EBS shall immediately notify the Client of such insufficiency and Client shall deposit sufficient funds into the Reserve Account in order to maintain the Minimum Balance.
- b) EBS, as agent of the Client, will use due diligence to collect all Contributions due from employees and/or member agencies of the Client for coverage afforded under the Plan and shall promptly notify the Client of any unpaid Contributions on a monthly basis.
- c) EBS shall take the following actions with respect to the Reserve Account.
  - i. On a monthly basis EBS shall withdraw funds from the Reserve Account and deposit such funds into the Cash Balance Account in an amount sufficient to pay all premiums then due to insurance carriers providing coverage to employees under the terms of the Plan.
  - ii. On a monthly basis, after depositing funds from the Reserve Account to the Cash Balance Account as set forth in Section (i) above, EBS as agent of the Client, shall apply the then remaining balance in the Reserve Account in excess of the Minimum Balance to the Client to be used for the following purposes: (a) payment of the costs of all administrative services provided by the Client including but not limited to, the fees and expenses of the Administrator of the Client and the Client's various consultants including attorneys, actuaries, tax consultants, certified public accountants, brokers, EBS as a third party administrator, etc.; (b) contributions to be made into the Client's Reserve Fund pursuant to the direction of the Client's Board of Directors; and (c) for any other lawful purpose of the Client, including the payment of dividends to member agencies of the Client.

EBS, as the agent of the Client for the collection of contributions, the deposit of contributions into the Reserve Account, and the disbursement of the funds from the Reserve Account into the Premium Trust Account and to the Client, as set forth herein, shall have no liability for acting upon any written instruction contained herein or presented by Client in connection with the Reserve Account which EBS in good faith believes to be genuine. Furthermore, EBS shall not be liable for any act or omission in connection with these services provided as agent to the Client except for its own negligence, willful misconduct or bad faith. EBS shall not be liable for any loss or diminution in value of the Reserve Account as the result of the investments of the Reserve Account.



7. CASH BALANCE ACCOUNT

As agent of the Client, EBS shall withdraw sufficient funds from the Reserve Account on a monthly basis and deposit such funds into the Cash Balance Account on a monthly basis for the purpose of paying all premiums then due and payable to insurance carriers providing coverage to employees under the terms and conditions of the Plan, pursuant to invoices provided by such insurance carriers. Upon request, EBS will provide assistance to Client in Client's efforts to develop an accounting policy for the Cash Balance Account designed to ensure that sufficient contributions are withdrawn from the Reserve Account and deposited into the Cash Balance Account on a monthly basis to ensure that sufficient funds are available to pay all premium obligations of the Plan when due. It shall be the responsibility of the Client to determine if changes in the accounting policies for the Cash Balance Account are needed and/or appropriate.

8. DEFINITIONS

- **Vendor's Network** means the hardware, software, network server(s) and data center of Vendor or of a third party under lease or license to Vendor that are utilized to provide the applicable components of the Services to Client hereunder.
- **Contractor** means EBS
- **Covered Lives** or Eligible Employee means any person who (i) has data housed in WORKTERRA and (ii) is an employee or contract worker of an Agency member of Client except for those in a deceased or inactive status.
- **Data** means demographic and election information for each former and current covered life
- **Dependent** means any person whose demographic information is housed in WORKTERRA as the spouse (any type ex. common law), domestic partner or child of an employee of an Agency member of Client.
- **EBS Work Hours** means Monday through Friday 8am – 5pm Pacific except for scheduled holidays which will be provided to Client each year in advance. For current year, see attachment D.
- **Employees** are all employees of Agencies that are members of Client and that receives a W-2 or 1099 from their agency employer.
- **Health Plans** means a group health plan described in Internal Revenue Code Section 4980B(g)(2).
- **Plan Participant** means an Employee or a Dependent, COBRA or LOA participant (and if so specified by Client any other individuals) both eligible and covered under Client benefit plans being administered by Vendor under this SOW.
- **WORKTERRA** means Vendor's software that is wholly owned by Employee Benefit Specialists, Inc. for the enrollment and termination of employees and eligible dependents into the covered benefit Plans.
- **PEPM** stands for Per Eligible Per Member (see quote to identify billing method appropriately). Eligible member for this purpose is the same as a covered life as defined above.
- **PPPM** stands for per participant per month (see quote to identify billing method appropriately)

- **Per Event** relates to any services EBS provides on a per occurrence basis. When the Client requests a service in this category, they will be billed on a per event basis opposed to PEPM or PPPM.

#### 9. SECURITY:

Vendor shall throughout the durations of this SOW:

- Maintain security procedures to prevent the unauthorized access to a disclosure, destruction, damage, loss or alteration of the Data, taking into account the nature of the Covered Life Data (former and current Covered Lives includes deceased and inactive statuses).
- Take measures no less protective than those provided for under this Agreement as of the Effective Date against unauthorized or unlawful processing of the Data and against accidental loss or destruction of, or damage to, any Data for Covered Lives former and current.
- Ensure that all Data is protected in a manner no less protective than those provided for under the Agreement as of the Effective Date from accidental and deliberate damage
- Maintain systems which detect and record any attempted damage or amendment to Data
- House the Data in physically secure premises protected at least by adequate fire protection and access control doors
- Deal promptly with any reasonable queries relating to the processing of Data of current and former Covered Lives
- Notify Client promptly of suspected breaches or compromises of the Data or Vendor systems or networks that indirectly support the Data (notice to be provided telephonically within 24 hours of the discovery of the suspected breach or compromise).
- Vendor shall ensure that any sub-Vendor or affiliate utilized by Contractor under this SOW accepts obligations in respect of Data which are no less restrictive than those accepted by Vendor in this section.

#### 10. SAFETY AND SECURITY

Vendor shall maintain and enforce safety and security procedures in operating Vendor's network that are at least:

- Equal to industry standards for such networks
- As rigorous as those procedures which are in effect for other similar networks then owned or controlled by Vendor, such safety and security procedures currently outlined in Vendor's security practices, which are specified in Vendor's Workterra Security Document which is incorporated herein by this reference.
- Compliant with any safety and security requirements contained within the terms and conditions of this Agreement and also with any additional reasonable safety and security requirements requested by the Client during the term of this Agreement, provided, that such requests do not result in a substantial increase in costs or expense to Vendor or Client.

Client acknowledges that Vendor may amend, in part or in whole, the Security Practices without Client consent or change the third-party reviewing and certifying Vendor's safety and security procedures; provided that Vendor shall provide Client prior written notice of all such amendments, and provided that Vendor shall not materially diminish or eliminate the level of security as set forth in the Security Practices and the Security Document without Client's prior written consent.

#### 11. BACK UP AND DISASTER RECOVERY

Vendor will perform an incremental backup of its services, including all Client data, on a daily basis and full backup on a weekly basis. Vendor shall provide, at all times during the term of this Agreement, reasonable disaster recovery for the Vendor's Network in accordance with the disaster recovery plan ("Disaster Recovery Plan"), see Attachment B.

Vendor shall not materially diminish or eliminate the level of service provided under the Disaster Recovery Plan without Client's prior written consent.

#### Maintenance Windows; Updates:

Vendor will establish maintenance windows during which time Vendor may take down the Vendor's Network to conduct routine maintenance checks. If the Vendor Network will be down for more than thirty (30) minutes within this window, Vendor shall so advise Client prior to any scheduled maintenance. Vendor shall not be responsible for any damages or costs incurred by Client or any Covered Employee during or as a result of the scheduled down time so long as Client is timely notified of such scheduled down time. Vendor may change its maintenance window upon 24 hours' notice to Client.

#### 12. PERIOD OF PERFORMANCE

This Statement of Work will be in effect for three (3) years, refer to the Master Services Agreement for termination rights. If any additional services need to be added a separate SOW will be negotiated and agreed up on by both parties. Any changes or extensions to this SOW will need to be agreed up on by both parties and an amendment executed.

Actual monthly charges are based on the number of covered lives in the system on the day that Vendor creates the billing statement. Contractor will create the billing statement on the same date each month (within a 3 day window).

Note: All change fees will be estimated and communicated in writing with an explanation of the charge and the anticipated completion date. Work will not begin on proposed changes that require fees until Client has signed off on the formal change request form submitted by Vendor.

#### 13. WORK PRODUCT AND INTELLECTUAL PROPERTY

For the purposes of this SOW, "Work Product" is defined as all inventions, improvements, computer programs, discoveries, ideas, processes, systems, writings or other works existing at the time of this SOW and made or conceived by Vendor, or its employees, agents or independent Vendors, solely or jointly with others, and any such information or materials which (a) are produced as part of or in the course of performing the Services; or (b) are conceived of or made during the term of or at any time following the expiration of this SOW by Vendor that are improvements, advances, changes or derivations of Vendor's existing Work Product. Vendor will retain all rights, title and interest it may have in its Work Product, including the source code, compilers, related documentation and materials, and any modifications and enhancements to the Work Product at all stages of development and upon completion, and all patents and copyrights in the Work Product, and nothing in this SOW shall be construed to give Client any right, title or interest therein. Client shall render all reasonably required assistance to Vendor to protect the rights described above. Client warrants it has all right, power and authority to affect all assignments, transfers, and waivers provided herein. Any jointly developed work product will be owned by Vendor who may use, license, modify or transfer such Work Product without permission by, or compensation or accounting to Client.

Client has not and shall not assign, license or otherwise transfer ownership, rights, title, or interest in the Work Product to any third party (including but not limited to copyright, patent, trademark, trade secret or any other intellectual proprietary right) or take any action which would result in the imposition of any lien or other encumbrance on any part of the Work Product to be created pursuant to this SOW.

#### 14. INVOICING

Subject to the terms and conditions of the agreement, payment for Services will be due ten (10) days after Client's receipt of a complete invoice.

Invoices will be uploaded to the EBS secure site for electronic access by Client.

**Recurring Fees:** PEPM, PPM, fulfillment or other agreed upon charges specifically identified in this SOW will be billed according to this SOW.

**Optional Services:** Additional services may be elected and will be estimated and signed off by Client prior to work beginning. In such cases an additional SOW will be completed and signed by both Parties.

**Changes:** Requests for changes to the configuration of the system, or files will be quoted based on the hourly rate listed in Attachment A. Work will not begin on changes until the change request form has been fully executed by both parties.

**Any service not specifically outlined in this SOW will be quoted upon request.**

This SOW may be executed in one or more counterparts, and if in more than one counterpart, each, when taken together, shall constitute one and the same instrument. Signatures on this SOW which are exchanged by facsimile or other electronic means are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as original signatures.

IN WITNESS WHEREOF, the parties hereto have caused this SOW to be executed by their respective authorized representatives effective as of the date last written below.

**FDAC Employment Benefits Authority**

By: Jean D Moore Digitally signed by Jean D Moore  
DN: cn=Jean D Moore, o=FDAC EBA, ou,  
email=jmoore@palpinelire.org, c=US  
Date: 2015.05.14 14:24:28 -0700'

Name: Jean D Moore

Title: Board President .

Date: 5/5/2015

**Employee Benefit Specialists, Inc.**

By: 

Name: David Rhodes

Title: CEO

Date: 5/5/2015

## Attachment A Fees

### **One-Time Fees**

#### **Implementation Fees:**

##### **System Configuration**

\$ 12,000

(Includes system set up and vendor files for up to 10 plans and 8 carriers– includes up to 8 hours of data scrubbing all others \$175/hour)

##### **Payroll File Set Up (one-time fee)**

\$ 1,500 per district if agreed upon prior to the set up

(Includes up to 8 hours – all others \$175/hour)

##### **System Training**

**Included**

(Generally takes 3 hours to train administrative users – quick user guides provided as well)

##### **Annual Open Enrollment**

**Included**

(Includes the updating of current plans – if new carriers are added there is an hourly fee to create the vendor files for integration of \$175/hour)

##### **Administrative Access (1 seat per district)**

**Included**

(Administrative seats will be provided to 2 members of FDAC EBA and 2 members of the Gallagher team. The seats are transferrable within Client and can be used by more than two people but not concurrently). All other seats are \$250 per seat.

##### **Enrollment of Benefits**

**Included**

##### **Change Fees**

\$175 per hour

EBS reserves the right to quote fees for changes to file layouts after final sign off for either employer or vendor files. Changes to configuration of the system that require more than 3 hours will be quoted upon request. Requested changes that require coding or special programming will be quoted upon request. Prior to any requested changes, a timeline of the project and fees will be agreed upon by FDAC and EBS. Both parties will commit to the agreed upon project timeline to ensure the project is completed on schedule. Note: EBS does NOT charge change fees for open enrollment system updates or current plans or rates.

## Monthly Fees

### WORKTERRA

\$2.90 PEPM

(Includes fully configured system, vendor files no more than once per day, employer payroll files received and sent no more than once per day, client service and account management)

	<u>Desired Service?</u>		
<b>Consolidated Billing</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	\$1.25 PEPM
<b>COBRA &amp; Retiree Administration</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	\$1.00 PEPM
<b>SF HRA Benefit Administration</b>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
<b>Call Center (Basic, included in base fee)</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
<b>Call Center (Enhanced)</b>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	\$1.15 PEPM for Year Round or \$10,000 for Open Enrollment only
<b>Section 125 (includes debit card)</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	\$5.00 PPPM
<b>Qualifying Event Administration</b>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
<b>Student Verification</b>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
<b>Voluntary Benefits Administration</b>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
<b>EOI Processing Administration</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	\$0.10 PEPM
<b>Direct Billing</b>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
<b>Direct Billing (Manual Process)</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	\$20.00 Per Event
<b>Health Savings Account</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	\$4.00 PPPM
<b>Qualified Medical Support Order Admin</b>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
<b>Fulfillment</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Per event basis only

**All other services quoted upon request.**

Fees are billed Per Employee per Month (PEPM). For purposes of WORKTERRA billing, an employee is any person who has data housed in WORKTERRA except for those with a status of "Deceased" or "Inactive". Employees with a status of "Terminated" are included in the PEPM calculation. Dependents are not included when calculating PEPM fees.

**Attachment B**  
**Vendor's Scheduled Holidays**  
2015

January 1, 2015	New Year's Day
February 16, 2015	President's Day
May 25, 2015	Memorial Day
July 3, 2015	Independence Holiday
September 7, 2015	Labor Day
November 26 & 27, 2015	Thanksgiving Holiday
December 25, 2015	Christmas Holiday