



## Amended and Restated Order Form

Pursuant to the terms and conditions set forth in the Client Services Agreement (“Agreement”) between Benefitfocus.com, Inc. (“Benefitfocus”) and City of North Las Vegas (“Client”) (collectively the “Parties”) and this Order Form, the Parties agree that Benefitfocus will provide to Client those Software Services identified and marked with an “X” in Section II for the fees indicated. The Professional Services and/or Software functionality (as applicable) are defined in the attached appendices. This Order Form shall amend and restate in its entirety the Order Form(s) dated the Order Form for the Benefitfocus Marketplace Services dated November 3, 2016, the Order Form for Benefit Service Center Services dated September 14, 201, the Order Form for FSA and COBRA Services dated September 11, 2018, and the Order Form for ACA Management and Reporting Services dated July 1, 2018.

I. Client Information		<input type="checkbox"/> New Client	<input checked="" type="checkbox"/> Existing Client	<input type="checkbox"/> System Integrator Implementation	<input type="checkbox"/> Reseller
1. Client Name:	City of North Las Vegas				
2. Address:	2250 Las Vegas Blvd North #600 North Las Vegas, NV 89030				
3. Effective Date:	October 25, 2020				
4. End of Initial Term:	October 25, 2021				
5. Account Executive:	Mallory Morris				
6. Solutions Engineer:	Ben Pistole				
7. Client Contact (name, email and phone number):	Kimberly Koch Lee, <a href="mailto:kocchleek@cityofnorthlasvegas.com">kocchleek@cityofnorthlasvegas.com</a>				
8. Invoice Contact (name, email, address and county):	Kimberly Koch Lee, <a href="mailto:kocchleek@cityofnorthlasvegas.com">kocchleek@cityofnorthlasvegas.com</a> 2250 Las Vegas Blvd North #600 North Las Vegas, NV 89030 Clark County				
9. Duplicate Invoice: (Yes/No):	No				
10. Duplicate Invoice Contact Information (name, email, address):	Not applicable				
II. Services:					
PROFESSIONAL & SOFTWARE SERVICES					
<input checked="" type="checkbox"/> <b>Benefitplace®</b> <input type="checkbox"/> Health Insights <input type="checkbox"/> HCM API <input checked="" type="checkbox"/> Benefit Service Center  <input type="checkbox"/> <b>Benefitplace Health Insights (Stand Alone)</b> <input type="checkbox"/> Additional Insights Data Sources (In Excess of Three)  <b>Benefitplace Product Upgrades</b> <input type="checkbox"/> Single Sign-On (SAML 2.0) <input type="checkbox"/> Additional HCM/payroll deduction files <input type="checkbox"/> Additional Data Load (Two (2) or More) <input type="checkbox"/> Total Compensation App (Self-Service) <input type="checkbox"/> acaMax  <b>Benefitplace Administrative Services</b> <input type="checkbox"/> Verification Services <input type="checkbox"/> One Time Dependent Audit <input type="checkbox"/> Ongoing Verification <input type="checkbox"/> Fulfillment Services <input type="checkbox"/> Open Enrollment Confirmation Statements <input type="checkbox"/> Color <input type="checkbox"/> Black & White <input type="checkbox"/> Post Cards (Color) <input type="checkbox"/> Custom Fulfillment Services <input type="checkbox"/> QMSCO Services <input checked="" type="checkbox"/> COBRA Administration <input type="checkbox"/> Benefitfocus ACA Management & Reporting <input type="checkbox"/> Optional Data Support Services <input type="checkbox"/> ACA Paper Fulfillment Services			<input type="checkbox"/> <b>Benefits Service Center Upgrade Options</b> <input type="checkbox"/> Extended Hours <input type="checkbox"/> Extended Hours (Open Enrollment Only)  <b>Benefitplace Professional Services</b> <input type="checkbox"/> Content Management Services: <input type="checkbox"/> One-Time <input type="checkbox"/> Refresh <input type="checkbox"/> Migration <input type="checkbox"/> Additional hours <input type="checkbox"/> Ongoing Subscription <input type="checkbox"/> Custom Report <input type="checkbox"/> Transmission Project <input type="checkbox"/> Business Restructuring Services <input type="checkbox"/> Annual <input type="checkbox"/> One-Time  <input type="checkbox"/> <b>Equifax Essentials Solution</b> <input type="checkbox"/> Standard Support <input type="checkbox"/> Premium Support  <b>Benefitplace Additional Services:</b> <input type="checkbox"/> One Place Registration Services  <input type="checkbox"/> <b>Open Enrollment Reservation</b> <input type="checkbox"/> <b>Colleague For Life Transition Services</b>  <b>Benefitplace Billing Services:</b> <input type="checkbox"/> Direct Billing <input type="checkbox"/> Billing & Payment		



## Amended and Restated Order Form

### WageWorks, Inc. Services

#### WageWorks, Inc.

<input type="checkbox"/> COBRA <input type="checkbox"/> Complink 1 <input type="checkbox"/> Complink 2	<input type="checkbox"/> Direct Billing <input type="checkbox"/> Full Open Enrollment Services <input type="checkbox"/> Partial Open Enrollment Services	<input type="checkbox"/> HRA Form 5500 (HRA)	<input type="checkbox"/> Commuter <input type="checkbox"/> FSA <input type="checkbox"/> Form 5500 (FSA)
--	--	--	---

#### Benefitplace Consumer Directed Healthcare Accounts

FSA  HRA  HSA

#### III. Ongoing Software Services:

A. Services Description	Invoice Frequency	Rate	Employee Type	Minimum Quantity	Minimum Fee	Billing Terms
Benefitplace	Annual	\$3.75	Enrollment Eligible Full	660	\$2,475	See Order Form, Section III.B.2
Benefitplace	Annual	\$0 (waived)	Enrollment Eligible Voluntary Only	500	\$0 (waived)	See Order Form, Section III.B.2
Benefitplace	Annual	\$0.50	Non-Enrollment Eligible	250	\$125	See Order Form, Section III.B.2
Benefits Service Center	Annual	\$1.50	Enrollment Eligible Employees	1,000	\$1,500	See Order Form, Section III.B.3
Benefitfocus ACA Management & Reporting Services	Annual	\$3.09	All employees	1,420	\$4,387.80	See Order Form, Section III.B.4
COBRA Administration	Monthly	\$0.68	Covered Employees	400	\$272	See Order Form, Section III.B.5
Flexible Spending Account	Monthly	\$4.63	Participants	162	\$750.06	See Order Form, Section III.B.6

#### B. Ongoing Software Services Terms and Conditions

- At the End of the Initial Term, and any renewal term thereof, the Ongoing Software Services shall automatically renew for additional one (1) year terms (each a "Renewal Term"), unless either party provides written notice of its intent to not renew not less than ninety (90) days prior to the end of the then current term. In the event Client wishes not to renew this Order Form, Client must give Benefitfocus written notice of intention to not renew according to the timeframes defined herein and prior to the expiration of the then-effective period. Any such notice must be sent to Benefitfocus by email to [Legal1@Benefitfocus.com](mailto:Legal1@Benefitfocus.com) or as required by the Agreement. Notices sent to Benefitfocus via any other method are not effective and will not result in non-renewal of this Order Form.
- Base Benefitplace Software Services:**
  - On October 25, 2020, and monthly thereafter, Benefitfocus will invoice Client based upon the greater of: (i) the minimum number of Enrollment Eligible Employees (Full or Voluntary Only) and Non-Enrollment Eligible Employees multiplied by the respective PEPM rate; or (ii) the actual number of Enrollment Eligible Employees (Full or Voluntary Only) and Non-Enrollment Eligible Employees loaded within the *Benefitplace* multiplied by the respective PEPM rate.
  - Client agrees that the Base *Benefitplace* Professional Services Fees include data exchange configuration enablement and testing services for the Vendor Data Interfaces defined in Appendix A. For any change or addition to the list defined in Appendix A, a fee per change shall apply for each Transmission Data Vendor Interfaces and each Transmission Project Data Vendor Interfaces based upon then-current Benefitfocus standard list pricing and will be invoiced to Client as changes are incurred. For the avoidance of doubt, an addition of a BenefitsPlace Benefit Catalog product or a replacement of a BenefitsPlace Benefit Catalog product with another BenefitsPlace Benefit Catalog product will not incur a fee.
- Benefits Service Center Services:**
  - On October 25, 2020, and monthly thereafter, Benefitfocus will invoice Client based upon the greater of: (i) the minimum number of Enrollment Eligible Employees (Full or Voluntary Only) and Non-Enrollment Eligible Employees multiplied by the respective PEPM rate; or (ii) the actual number of Enrollment Eligible Employees (Full or Voluntary Only) and Non-Enrollment Eligible Employees loaded within *Benefitplace* multiplied by the respective PEPM rate.
- Benefitfocus ACA Management & Reporting Services:**
  - Standard IRS Reporting Services. Benefitfocus will invoice Client for the PEPY fee for the IRS Reporting Period selected above on April 1 of the IRS Reporting Period year or upon contract execution and, provided Client renews, each April 1 thereafter for the remainder of the Order Form term at the above PEPY rate. For the selected IRS Reporting Period and each additional Reporting Period thereafter, Benefitfocus will also determine the difference between the number of employees invoiced by Benefitfocus as of April 1 of the applicable Reporting Period and the actual number of employees electronically submitted to the IRS following such Reporting Period, and, to the extent the number of employees electronically submitted to the IRS is higher, then Benefitfocus will also invoice Client for the additional number of employees electronically submitted to the IRS multiplied by the above PEPY.
- COBRA Administration:**

- a. On October 25, 2020, and monthly thereafter, Benefitfocus will invoice Client based upon the greater of: (i) the respective monthly minimum fees stated above; or (ii) for the actual population of Covered Employees, as defined in the Cobra Appendix, loaded within the COBRA Application multiplied by the applicable PCEPM rate. Covered Employees shall be counted as of the last day of the prior month, but for the first month, the count shall be determined by the initial data load.
- b. If in scope, the fees for the Additional Buy-Up Services will be invoiced as incurred.
- c. Additional Pricing Conditions and Assumptions:
  - i. Covered Employees enrolled in more than one COBRA-Eligible Plan are counted only once.
  - ii. Benefitfocus will collect and retain COBRA administrative fees from COBRA Continuants in the amount of two percent (2%) of COBRA premiums or the maximum amount permitted by law, whichever is greater
6. **Consumer Directed Healthcare Accounts: FSA:**
  - a. The PPM fees stated above are monthly fees for the Reimbursement Plan Services as defined herein. On October 25, 2020, and monthly thereafter, Benefitfocus shall invoice for the actual number of Participants within the *Benefitplace* Software Service multiplied by the respective PPM rates.
  - b. If in scope, fees for the additional Buy-Up services shall be invoiced as incurred.
  - c. Invoicing shall commence upon the sooner of: (i) that date when the Reimbursement Plan Services are made available to Client under essentially normal operating conditions; or (ii) the start date of Client's benefit plan year immediately following execution of the Order Form.
  - d. All fees hereunder are due and payable in accordance with the Agreement.
  - e. Additional Pricing Conditions and Assumptions:
    - i. Pre-set IRS compliant merchant category codes provided by Benefitfocus from time-to-time.
    - ii. Card configuration with Benefitfocus integrated Processor and Issuing Bank, on existing Bank Identification Numbers ("BINs")
    - iii. Remittance of premiums to the Client using required checking account (limited to one account only) 'For The Benefit of' Client at Benefitfocus preferred bank.
7. **Definitions:**
  - a. An "Additional *Benefitplace* Data Source for Initial Load" means that term defined in Appendix A to this Order Form.
  - b. A "Data Capture" means that term defined in Appendix A to this Order Form.
  - c. A "Vendor Data Interface" means that term defined in Appendix A to this Order Form.
  - d. An "Enrollment Eligible Employee" term used without reference to "Full" or "Voluntary Only" means both Enrollment Eligible Employee (Full) and Enrollment Eligible Employee (Voluntary Only).
  - e. An "Enrollment Eligible Employee (Full)" means an employee that is eligible for at least one (1) medical, dental, vision, or other IRC Section 125 benefit type within the *Benefitplace*.
  - f. An "Enrollment Eligible Employee (Voluntary Only)" means an employee that is only eligible for enrolling in one (1) or more non-IRC Section 125 benefit types configured within the *Benefitplace*.
  - g. An "Equifax Employee" means an employee an employee loaded within the Equifax system.
  - h. A "Non-Enrollment Eligible Employee" means an employee that is not eligible for enrollment in a benefit configured within the *Benefitplace* and is either, (i) provided access to the Employee Communication Portal component of the *Benefitplace*, or (ii) not provided access to the *Benefitplace* and, if applicable, is loaded within the *Benefitplace* solely for the purpose of performing data transmission and/or reporting functions.
  - i. An "Enrolled Employee with Dependent(s)" means a Client employee loaded within the *Benefitplace* that is enrolled in one or more configured benefit plans with a coverage level that includes at least one enrolled dependent.
  - j. A "HCM Integration Suite Data Integration Interface" means one data transmission link that includes up to one (1) inbound employee demographic file from Client's HR indicative or payroll system for importing within the *Benefitplace* and one (1) outbound deduction file exported to Client's HR indicative or payroll system from the *Benefitplace*.
  - k. A "Transmission Vendor Data Interface" means that term defined in Appendix A to this Order Form.
  - l. A "Transmission Project Vendor Data Interface" means that term defined in Appendix A to this Order Form.
8. The fees set forth in the Order Form will remain fixed for the first twelve (12) months following Deployment. Annually, thereafter, Benefitfocus will increase the Ongoing Software Services fees on an annual basis by the greater of 3% or CPI-U.
9. Certain services under this Order Form may be performed by Benefitfocus or Benefitfocus' subcontractors and vendors located abroad. Notwithstanding any such services performed by third parties, Benefitfocus shall remain liable for all services performed hereunder.



**Amended and Restated Order Form**

This Order Form is accepted and agreed to by:

**BENEFITFOCUS.COM, INC.**

**CITY OF NORTH LAS VEGAS**

By:   
4FAFF2D81B184E9...  
Print: Alpina Wegner  
Title: CFO  
Date: November 9, 2020

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## Appendix A: Implementation Order Form

### Section I: HCM/API Integration Provider(s):

Total Number of HCM/API Integration Data Interfaces: 3

Vendor System/Version	File Type	Inbound or Outbound Exchange	System Administered by Vendor, Client, or Broker	Standard or Custom
Oracle (Active)	HCM Deduction File	Outbound	Client	Custom
Oracle (Retirees)	HCM Deduction File	Outbound	Client	Custom
Oracle	Employee Demographic File	Inbound	Client	Custom

### Section II: Vendor Interfaces:

Total Number of Transmission Projects: 0

Total Number of Vendor Interfaces in Excess of Six (6): 0

Vendor Interface	Benefit Type	Data Capture, Transmission, Transmission Project, or Transmission (API)	Benefit Catalog/ Brokerage Product (Y/N)?	Benefit Type to be Direct Bill, Payroll Deducted or Self-Pay?	PEPY (Y/N)?
Aflac	Accident; Critical Illness; Critical Illness - Spouse; HOSPITAL CONFINEMENT INDEMNITY; Short Term Disability	Transmission	Y	Payroll Deducted	N
Cigna	AD&D; Employee Assistance Program; Life; Long-Term Disability; Spouse Life; Voluntary AD&D; Voluntary Child AD&D; Voluntary Child Life; Voluntary Life; Voluntary Long Term Disability; Voluntary Spouse AD&D; Voluntary Spouse Life	Transmission	Y	Payroll Deducted	N
Transamerica	IRS Reporting	Transmission	N	Payroll Deducted	N
Ameritas	Dental; Vision	Transmission	N	Payroll Deducted	N
ARAG	Legal	Transmission	N	Payroll Deducted	N
Delta	Dental	Transmission	N	Payroll Deducted	N
Health Plan of Nevada	Medical; Supplemental Medical	Transmission	N	Payroll Deducted	N
Health Plan of Nevada (Audit)	Medical; Supplemental Medical	Transmission	N	Payroll Deducted	N
UMR	Medical; Supplemental Medical	Transmission	N	Payroll Deducted	N
Choose an item.	Choose an item.				

### Section III: Single Sign-On:

Total Number of SSO Link(s): 1

Single Sign-On Vendor	Direction (relative to Benefitfocus) Inbound or Outbound
Cigna (EOI)	Outbound

**Section V: Benefitplace Vendor Data Sources:**Total Number of *Benefitplace* Data Sources for Initial Load in Excess of one (1): 0**Section VI. Benefitplace Health Insights Data Sources: 0****Section VII. Definitions:**

1. A “*Benefitplace* Data Source for Initial Load” means a third-party data source that is used to complete the initial data load of Client’s employee data within *Benefitplace* during the initial *Benefitplace* implementation.
2. A “Data Capture” link means that the applicable benefit type will be enabled and the associated benefit elections will be stored within the Enrollment Portal; provided, however, the transmission of such benefit elections data from Benefitfocus to the applicable carrier or third party provider system is not commercially available or in scope, and shall be the responsibility of Client (or its Authorized User) utilizing Benefitfocus’ standard or ad-hoc reports through self-service.
3. A “HCM Integration Data Interface” means one data transmission link that includes up to one (1) inbound employee demographic file from Client’s HRIS system for importing within the *Benefitplace* and one (1) outbound HRIS or HCM integration file exported to Client’s HR indicative or payroll system from the *Benefitplace*.
4. A “SSO Link” means a Single Sign-On link defined as in scope per Appendix B to the Order Form.
5. A “Vendor Interface” means a file containing Client Data for one or more Vendor benefit products or other Vendor indicative data that is transmitted from the *Benefitplace* Client’s third-party vendor or received from Client’s third-party vendor for importing within the *Benefitplace*.
6. A “Transmission” Vendor Data Interface means that, as of the Effective Date of the Order Form, an interface to transmit the applicable employee benefits data from Benefitfocus to the applicable Vendor system is commercially available for enablement within the *Benefitplace* and will be enabled, tested, and deployed within Client’s production environment by Benefitfocus. This link also includes an API link made commercially available by Benefitfocus.
7. A “Transmission Project” Vendor Data Interface means that the applicable Vendor benefit type will be enabled as a “Data Capture” link (as defined above); provided, however, that Benefitfocus will add such request to its EDI development queue in order to convert to a “Transmission” eLink.
8. A “*Benefitplace* Health Insights Data Source” means a third party or Client-supplied data file source, which may include new, historical or replacement medical claim, prescription claim, eligibility and/or ancillary data file(s).

This Appendix defines a high-level overview of the functionality of the Software Services selected in the Order Form between Client and Benefitfocus. To the extent applicable, detailed functionality for the Software Services, subject to warranty claims, is defined within the current versions of the User Guide, Admin Guide and Report Guide, as provided to Client, and as updated with each new release.

### I. Summary of *Benefitplace* Functionality:

#### A. Content Manager:

1. An online, Client-branded internet portal utilizing a unique URL providing:
  - a. A content management system, including on-line tools for Client management
  - b. Content libraries and tools (including Frequently Asked Questions, RSS feeds, to-do lists, and training libraries)

#### B. Online Benefit Enrollment:

1. Online enrollment for Client's benefits (listed in Appendix A to the Order Form - Implementation Order Form), or as may be amended via an eLink Order Form and consisting of:
  - a. Employee tasks:
    - i. Enter or change personal and demographic information
    - ii. Benefit elections and life event changes
    - iii. Printing of enrollment confirmation
  - b. HR Administrator tasks (in addition to employee tasks):
    - i. Add/terminate/rehire employees
    - ii. Add, change, or cancel COBRA elections
  - c. Defined contribution functionality:
    - i. Shopping cart feature within the Benefitfocus Employee Role™, including:
      1. Display of applicable defined contribution amounts based upon the configured business rules and benefit enablements
      2. Progressive allocation of the defined contribution amounts based upon the plans selected during the enrollment user workflow
  - d. Cost Estimator to compare plan attributes and out-of-pocket expenses for selected medical plans
2. Enablement and display of third-party service provider products from the Benefitsplace Benefit Catalog to Authorized Users utilizing Benefitfocus standards.
3. Client acknowledges agrees that:
  - a. Benefitfocus and/or its wholly-owned subsidiary, Benefitstore, Inc., may receive compensation for placement of certain Benefitsplace products
  - b. Notwithstanding anything to the contrary stated within the Agreement, Benefitfocus may use Client Data, including, but not limited to contact, demographic, beneficiary and dependent information and information regarding previously enrolled benefits to market and provide other Services to Client's current and terminated Authorized Users.

#### C. Reporting Library:

1. A tool that offers options to generate and view reports by HR Administrators access to employee benefit-related data. HR Administrators are able to:
  - a. Apply various filters to capture the critical data points
  - b. Download reports via Excel, CSV, and PDF

#### D. Event driven notifications:

1. *Benefitplace* provides eMail and SMS text messaging capabilities through the use of the Benefitfocus event driven messaging framework, which allows HR Administrators the option to:
  - a. Send scheduled messages, confirmation messages and event-based messages to their Authorized Users
  - b. Create edit and manage message content and details
  - c. Establish event driven rules for when a specific message can be sent (*e.g.*, when an Authorized User reaches a specific age, based on the individual employee's start and end date of enrollment, etc.)
  - d. Select messages to be delivered via eMail or SMS Text Message

**Note:** *eMail messages and SMS text notifications are available to the Client at no additional fee as part of the Benefitplace offering.*

#### E. eLinks:

1. Infrastructure for submission of benefit elections to Client's benefit providers, utilizing HIPAA 834 and iMax® file formats with Benefitfocus integrated carriers (utilizing Benefitfocus eLinks) or Client submission of enrollment reports to Client's benefit providers (Client Self Service), as applicable

#### F. HCM Integration Suite Connect:

1. Infrastructure for import and export of data to and from Client's payroll system utilizing a file format developed by Benefitfocus
2. Import data into *Benefitplace* containing eligibility updates such as new hires, terminations and category changes

3. Export data to Client's payroll system from *Benefitplace* containing outbound deduction amounts or codes

**G. Cost Estimator:**

1. An online, interactive decision aid tool made available within *Benefitplace*, which provides the following functionality when launched from the Medical Plan Selection Page of Online Enrollment:
  - a. Comparison of up to four (4) medical plans [up to three (3) side-by-side on screen comparisons] based upon plan attributes configured within *Benefitplace*, by way of example, out-of-pocket maximums, deductibles, co-insurance percentages, plan rates (the "Plan Attributes"), and typical healthcare usage (the "Utilization Data"), and cost information
  - b. Cost estimator to calculate the estimated cost for each medical plan selected, based upon the selected Plan Attributes and Authorized User's Utilization Data:
    - i. The Cost Estimator estimates the Authorized User's costs based upon benchmark healthcare cost and utilization data provided by the Medical Expenditure Panel Survey of the US Dept. of Health and Human Services (the "MEPS national averages"). Authorized Users can apply to their own expected utilization as they compare plans. The default Utilization Data is based upon expected values for a particular age and gender based upon national averages for consumer selecting private coverage in the United States.
    - ii. Authorized Users may adjust the default Utilization Data within the Cost Estimator to personalize their Utilization Data based upon their expected future healthcare utilization, such as frequency of doctor's visits or number of prescriptions filled
  - c. Display of estimated annual costs based upon the premium value for each medical plan, estimated out-of-pocket costs calculated by the cost estimator, Client contribution, and tax advantage accounts
  - d. Printable version of the medical plan comparison performed by the Authorized User to include plan details and out-of-pocket cost estimates for each of medical plans being compared
  - e. The Cost Estimator will be made available within *Benefitplace* during Client's open enrollment and throughout the Client plan year to support new hires and qualified life event transactions
  - f. Configuration changes (such as changes in variables) to Client's plan attribute groups, for Client's initial and subsequent open enrollment period(s) configured within *Benefitplace* are included at no additional cost for the term of the Order Form. Additional services not included within the scope of this Appendix C are subject to further discovery and scoping and may require additional fees.

**II. Summary of *Benefitplace* Support Services:**

**A. *Benefitplace* technical services:**

1. Monitoring of technical services, including system connectivity to the Internet, server capacity and configuration, application performance, power, failover and disaster recovery systems
2. Administration and maintenance of database configurations, disk space, and required hardware components
3. Staffing for 24/7 response to critical alerts. A "critical alert" is an error or other issue which materially degrades Client's use of the Software Services or causes serious disruption of Client's business function supported by the Software Services.
4. Liaison services with Client information technology departments, as required to provide the Software Services

**B. eLinks and HCM Integration Suite Connect, and software configuration support:**

1. Manage and monitor eLinks and HCM Integration Suite Connect data transmission, as implemented
2. Research and resolve data conflicts and errors, as applicable
3. Implement updates to Client's business rules, benefits configurations, and eLinks implemented within the software upon instruction by Client
4. Manage and monitor Cost Estimator, as implemented
5. Manage and monitor SSO Links, as implemented

**C. Application support:**

1. Application support shall be provided by a Benefitfocus Account Manager from 8:00 a.m. to 8:00 p.m. EST subject to Daylight Savings Time rules, Monday through Friday (excluding Benefitfocus holidays). Application support includes:
  - a. Navigational application support
  - b. Password reset and access assistance
  - c. Application issue reporting

**D. Ongoing software maintenance:**

1. Design and development of features, enhancements, and other updates for inclusion in software releases, patches, test environments, and Documentation
2. Ongoing updates to standard product Documentation, user guides, training materials, and online help

**III. Summary of Benefit Service Center ("BSC"):**

- A. BSC services - Benefitfocus will provide the following BSC services:

1. Technology:
  - a. One (1) dedicated toll-free number for the purposes of receiving inbound calls from Authorized Users and to include live personalized service from 8:00 a.m. to 8:00 p.m. EST, Monday through Friday and subject to Daylight Savings Time rules (excluding Benefitfocus holidays)
  - b. Benefitfocus will record Authorized User inbound calls for quality assurance and training purposes.
  - c. Call recordings will be stored for one year following the call.
  - d. Monthly performance reports to include average speed to answer, abandonment rate, email response time and category of call received
2. Benefits Service Center Services:
  - a. Dedicated email address for Authorized User inbound emails with personalized answers
  - b. Live chat support through the *Benefitfocus Benefitplace* portal during the BSC hours of operation
  - c. Documentation of Authorized User inquiries within client relationship manager software
  - d. Benefit support to address benefit inquiries received from Authorized Users utilizing Client's applicable business rules and processes ("Client's Program Criteria") and call transfer protocols
  - e. Application support to address application inquiries received from Authorized Users including:
    - i. Navigational application support
    - ii. Password reset and access assistance
    - iii. Application issue reporting
3. Manage and monitor Interactive Voice Response (IVR), as implemented
4. Foreign language services. Support from over the phone interpretive services. Benefitfocus associate speaks to the caller through the Benefitfocus provided interpreter, who interprets the conversation meaning-for-meaning.
4. Telephonic enrollment. Benefitfocus benefit administrators will enter elections on behalf of Authorized Users directly within the enrollment application based on the specific requests of the Authorized User, consistent with Client's program criteria:
  - a. Benefitfocus benefit administrators will verify and/or update Authorized User information as provided by the Authorized User
  - b. Benefitfocus benefit administrators will inform Authorized Users that they have access to the online enrollment portal and train them on how to use it if they are interested
5. Evidence of insurability ("EOI") application support, including:
  - a. Update of Authorized User EOI information within the Benefitfocus Benefitplace according to Client's Program Criteria
  - b. EOI services are subject to the following assumptions:
    - i. Client will coordinate with applicable carrier(s) and the BSC to grant access to the Carrier's EOI online portal. If access to the Carrier's EOI online portal is unavailable, Client will coordinate with Carrier(s) and BSC to ensure BSC has access to EOI approval and denial statuses.
    - ii. Carrier is responsible for providing the effective date for the approved coverage amount.
    - iii. Subject to the agreed upon business requirements with the Client or Carrier, if an Authorized User has exceeded ninety (90) days from the date of election, and has not been approved by the Carrier, Benefitfocus will removing the pending EOI election within the Benefitfocus Benefitplace.
6. Appeal support, including:
  - a. Benefitfocus will accept eligibility and enrollment appeals submitted by Authorized Users and process those appeals utilizing Client's applicable business rules and processes ("Client's Program Criteria").
  - b. Assumptions:
    - i. Does not include claims appeals
    - ii. No paper fulfillment accepted or mailed

This Appendix defines a high-level overview of the functionality of the ACA Management and Reporting Services specified in the Order Form between Client and Benefitfocus provided to Client. The services defined herein include 1094-C/1095-C reporting to the Internal Revenue Service (IRS).

#### I. ACA Management and Reporting Implementation Services:

*Anticipated dates for implementation and deployment will be determined during technical discovery. The below services require technical discovery and configuration and will occur sometime after configuration of the Benefitfocus Benefitplace and may require coordination with the Benefitfocus software release schedule.*

- A. **Standard IRS Reporting Services:** For the applicable Reporting Periods, Benefitfocus will provide Client with the ability to load the applicable data required for the current Reporting Period within a self-service file upload tool in order to populate the 1095-C Forms, and utilizing the standard Benefitfocus file format and specifications (the "Standard IRS Reporting Services").
- B. **Optional Data Support Services:** For the applicable Reporting Periods, Client has the option, at the rates and deadlines set forth herein, to request that Benefitfocus provide support for the applicable Reporting Period to help Client format the required data provided by Client into the standard Benefitfocus file format and specifications required for self-service file uploading and/or assist Client with resolving applicable data exceptions resulting from such file upload (the "Optional Data Support Services").
- C. **For the above services, Benefitfocus will:**
  1. Conduct a discovery call with Client
  2. Provide specifications to Client on a required file format(s) and data fields
  3. Review process workflow and define error resolution procedures
  4. Determine and document schedule for implementation, testing, and deployment
  5. Conduct testing in a test environment

#### II. ACA Management and Reporting Software Services:

- A. **1095-C Forms:** For the applicable Reporting Periods, Benefitfocus will provide:
  1. An electronic version of the 1095-C Form, populated with Client-specific employee data, in PDF format and made available for Client download/printing, and a report made available for generation by Client, in xml file format, for Client's submission to the IRS or other third party designated by Client.
- B. **1094-C Forms:** For the applicable Reporting Periods, Benefitfocus will provide an electronic version of Client's 1094-C Form, populated with Client-specific employee data, within the *Benefitfocus Benefitplace* in PDF format and a report made available for generation by Client, in xml file format, for Client's submission to the IRS or other third party designated by Client.
- C. **IRS Submission:** To the extent that Benefitfocus is authorized and permitted to do so by the IRS, upon Client's request and authorization, Benefitfocus shall submit the 1095-C and 1094-C Forms to the IRS on behalf of Client for the applicable Reporting Periods.

*Client acknowledges that, as of the Effective Date of this Order Form, the regulations for implementing the requirements for electronic submission of the 1094-C/1095-C forms to the IRS are still subject to interpretation from administrative agencies and courts of competent jurisdiction, which may result in changes in the way the requirements are to be implemented. In the event that regulations (or the interpretation thereof) change in a manner that (1) requires Benefitfocus to materially alter its corporate structure or obtain other professional or business licenses (including without limitation designation as a tax preparer or other professional organization by the IRS); or (2) revokes the appropriate qualifications and authorizations to permit Benefitfocus to perform the data submission to the IRS; or (3) does not provide Benefitfocus with reasonable advance notice to permit Benefitfocus to make changes or obtain additional qualifications or authorizations to perform the data submission to the IRS (including any applicable changes to technology related to submission of the data to the IRS or other applicable Federal agency), then Client will be responsible for Self Service submission of the 1094-C/1095-C data to the IRS as further defined hereunder.*

#### III. Terms and Conditions:

- A. For the applicable Reporting Periods, there is a minimum sixty (60) day testing period for the Standard IRS Reporting Services and Optional Data Support Services. All required data for the IRS 1095-C Forms must be provided, loaded, signed-off on and finalized by Client not later than January 7 of the calendar year following the applicable Reporting Period in order for Benefitfocus to make the electronic version of the 1095-C IRS Forms available within the *Benefitfocus Benefitplace* and print and mail the 1095-C Forms, post-marked on or before the applicable due date required by the IRS. By way of example, for the 2020 IRS Reporting Period, Client must upload the final version of the required data within *Benefitfocus Benefitplace* by January 7, 2020 in order for Benefitfocus to make the electronic versions available by the required IRS deadline and print and postmark the hard copies by the required IRS deadline.
- B. The data format Client will utilize to review the loaded data during testing will be provided in .csv file format only.
- C. Client shall be responsible for providing and uploading the required data, utilizing the standard Benefitfocus file format and specifications, and validating the accuracy of the uploaded data. Upon Client uploading the required data via the self-service file upload tool, Client may make corrections to the loaded data by manually correcting such data within the *Benefitfocus Benefitplace*

user interface or uploading additional employee demographic data files via Client's payroll interface or the self-service file upload tool.

- D. Client acknowledges that the above ACA Management and Forms will only contain data for Client's medical benefit(s) as configured within the *Benefitfocus Benefitplace* (i.e., excludes all other benefit types).
- E. Access to electronic versions of the 1095-C Forms will only be provided to Client's actively-employed employees ("Active Employees"), which shall exclude employees designated with a "COBRA", "Terminated", or "Leave of Absence" status within or are otherwise not provided access to the *Benefitfocus Benefitplace* ("Inactive Employees"). Access to electronic versions of the 1095-C Forms will not be provided to Inactive Employees, or in the event Client terminates the *Benefitfocus Benefitplace* services prior to the applicable Reporting Period deadline. If Client does not purchase the Paper Fulfillment Services, then Client is responsible for printing and mailing such 1095-C Forms to its Inactive Employees, or in the event it terminates the *Benefitfocus Benefitplace* services prior to the applicable reporting deadline, at its own cost and expense. If Client purchases the Paper Fulfillment Services, then Benefitfocus will mail the 1095-C Forms to all Active Employees and Inactive Employees loaded within the *Benefitfocus Benefitplace* as a part of the Paper Fulfillment Services.
- F. To the extent Client has purchased the Benefits Service Center ("BSC") call center support, Benefitfocus will respond to member inquiries related to the 1095-C/1094-C Forms pursuant to the mutually agreed upon member support call script. In the event Client has not purchased BSC call center support, Benefitfocus will advise members to contact the Client-designated representative for inquiries related to the 1095-C/1094-C Forms.
- G. Notwithstanding anything to the contrary stated herein, in the event that the reporting requirements associated with the Affordable Care Act (ACA) are abolished by Federal Regulation as published within the CFR, Client shall have the right to terminate the ACA Management and Reporting Services for the applicable Reporting Period, and Benefitfocus will provide Client a pro-rata refund of fees pre-paid for such Reporting Period, measured as of the effective date abolishing the ACA reporting requirement.

This Appendix is subject to all the terms and conditions of the Client Services Agreement (the "Agreement") and the applicable order form ("Order Form"), by and between Client and Benefitfocus and provides a description of the services for the ongoing COBRA administration (the "COBRA Administration"). Benefitfocus and Client are each individually a "Party" and collectively the "Parties".

## I. Definitions:

- A. Capitalized terms that are not defined in this Appendix shall have the meanings set forth in the Agreement:
1. "Accountable Mail" means mail that provides documented proof that the letter or notice was mailed to the recipient at the recipient's address and meets COBRA regulatory requirements but does not mean that delivery is tracked.
  2. "Bank" means the bank selected from time-to-time to be the depository bank for premium payments.
  3. "Business Days" mean Benefitfocus business days, which exclude weekends and Benefitfocus holidays.
  4. "Carrier" or "Carriers" mean an insurer or health plan or other vendor of Client.
  5. "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the related regulation and interpretations by the Department of Labor and the Internal Revenue Service.
  6. "COBRA Application" means a web based application designed to enable the Client or COBRA Continuant to manage and process daily administrative obligations associated with COBRA.
  7. "COBRA Continuants" means qualified beneficiaries electing COBRA continuation coverage.
  8. "COBRA-Eligible Plan" means one or more benefit plans that are subject to COBRA, including, but not limited to, medical, dental, vision, employee assistance plan, health flexible spending arrangement, and/or health reimbursement arrangement benefits a Client has established for its employees.
  9. "Covered Employee" or "Member" means an employee that has enrolled in the employer's COBRA-Eligible Plan(s).
  10. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.
  11. "For the Benefit of" means a bank account that is used for processing premium payments for the benefit of COBRA Continuants or Client at the request of Client.
  12. "Qualifying Event" shall have the meaning given under COBRA.
  13. "Services" shall mean the COBRA Administration provided defined therein.

## II. COBRA Administration:

- A. **Benefitfocus Responsibilities for COBRA Administration:** Benefitfocus agrees to provide COBRA Administration described below on behalf of, and at the direction of, Client and its Covered Employees in exchange for the payment set forth herein
- B. **COBRA Administrative Implementation Services:**
1. Benefitfocus will setup Client in the COBRA Application using the COBRA Program Design Guide developed and mutually agreed upon as part of the design and implementation of the Services.
  2. Benefitfocus will provide standard instructions to Client regarding Client responsibilities. Implementation includes:
    - a. Initiation and planning, including sales transition meeting and project kickoff.
    - b. Discovery, including completion of the Benefit Design Guide and Client signoff.
    - c. COBRA Application configuration of five (5) divisions and enablement of the standard Benefitfocus file-based data transmission from the COBRA Application to Client's applicable carriers. Additional divisions will require further pricing and scoping and an additional writing signed by the parties.
    - d. Quality assurance testing and production deployment.
- C. **Employee Data Management:**
1. Benefitfocus will complete initial employee set up and ongoing maintenance of all COBRA Continuants and Covered Employees on the COBRA Application.
  2. Benefitfocus responsibilities for administering Covered Employee data management services will be dependent on the receipt of timely and accurate information from Client, including but not limited to plan designs, plan rates, and Qualifying Events.
  3. Benefitfocus will provide Technical Services and Data Quality Support – technical and data maintenance teams, to manage technical aspects of Client's relationship with Benefitfocus.
- D. **COBRA Notifications:** Upon receipt of data from Client which indicates a status change causing a Qualifying Event, or a new hire enrollment into a COBRA eligible plan, Benefitfocus will send via Accountable Mail, within the applicable time frame required by the COBRA provisions of ERISA, or upon the effective date of coverage where applicable, the notifications outlined below. Notifications will be configured during implementation of COBRA Services, including standardized Benefitfocus branding, and provided in standardized format and language:
1. Initial Notices ("General Rights Notices" as defined in COBRA) will be sent within the timeframe required by COBRA to newly Covered Employees and spouses informing them of their rights under COBRA.
  2. A COBRA Specific Rights Notice, including instructions for COBRA continuation election, will be sent within the timeframe required by COBRA to all Covered Employees who have a Qualifying Event.
  3. The timeliness of sending notifications is contingent on receiving timely, accurate and complete eligibility, qualification and status data per the process and format agreed upon for automated load into the COBRA Application. If complete information

is not received timely from Client, Benefitfocus will send the notices described in this Section as soon as administratively practicable after receiving the required information. If information from Client is not complete or is incorrect, such notices may be incomplete or incorrect.

4. If purchased by Client, Initial Notices (General Rights Notices) may be sent to all Covered Employees and spouses at the Target Go Live Date as noted in the Order Form, at the rate identified herein.
5. Notifications beyond the scope of this Section require further pricing and scoping and an additional writing signed by the parties.

**E. COBRA Continuation:**

1. Benefitfocus will mail standard payment coupons to COBRA Continuant after COBRA continuation coverage is elected.
2. Benefitfocus will send standardized forms and letters to communicate with COBRA Continuant concerning premium rate and benefit changes, COBRA continuation coverage eligibility status, Medicare eligibility, advance-termination notice for the individual conversion, and verification of termination of COBRA coverage.
3. Benefitfocus will provide online access to information related to the status of Qualified Beneficiaries and COBRA Continuant.
4. Benefitfocus will notify a COBRA Continuant if COBRA coverage terminates earlier than the end of the maximum period of coverage applicable to the Qualifying Event that entitled the individual to COBRA continuation coverage. The notice will be provided as soon as administratively practicable after Benefitfocus determines that the COBRA continuation coverage will be terminated early.
5. Benefitfocus will extend the maximum COBRA continuation coverage period in cases of disability and second Qualifying Events as allowed under COBRA when notified by COBRA Continuant.
6. Benefitfocus will provide its standard system generated open enrollment/premium rate change letter during open enrollment. Quotes can be provided for custom open enrollment materials, which require further scoping and pricing and an additional writing signed by the parties.

**F. Premium Payment Processing and Services:**

1. Benefitfocus will collect valid and timely premium payments (including any administrative charges and/or convenience fees) from or on behalf of COBRA Continuant, employing postmark date aware, "lock-box" payment processing services for paper payments made by mail, online payment processing made through the COBRA Application by credit/debit card or ACH, and recurring ACH payment initiation and processing.
2. Benefitfocus will, for the purpose of collecting premium payments made by paper documents and sent by mail to the Benefitfocus-assigned post office box (P.O. Box) on all Business Days, receive mail from the post office box, collect paper checks, remittance coupons, correspondence, or other paper documents, and scan or otherwise convert such paper documents into electronic formats for the purpose of tracking and posting payments.
3. Client hereby grants Benefitfocus agency authority to accept, endorse and deposit checks or money orders in Client's name on behalf of Client, and for the purpose of collecting premium payments made through the COBRA Application by credit card or ACH debits of the bank accounts of COBRA Continuant.
4. Benefitfocus will charge an additional online processing fee to credit/debit card payment methods, to the extent permitted by law and the applicable credit card operating rules and regulations. This fee will be payable by COBRA Continuant.
5. Benefitfocus will initiate scheduled monthly ACH transactions for those COBRA Continuant who request automated payment collection through the COBRA Application Member Portal or via form.
6. Benefitfocus will deposit all valid and timely payments received into one (1) designated bank account "For the Benefit of" Client.
7. Benefitfocus will remit to Client the COBRA premium payments paid by COBRA Continuant, less administrative fees, on a monthly basis via deposit into a single checking account. Additional bank account setup requires further scoping and pricing and an additional writing signed by the parties.
8. Benefitfocus shall consider a payment timely if it is delivered to the designated P.O. Box, postmarked by the U.S. Postal Service, sent by express delivery service (with evidence thereof), or made through the COBRA Application, within timeframes for timely payments defined within the COBRA Application.

**G. Administration in Accordance with Law:**

1. Benefitfocus will administer COBRA services in accordance to applicable laws and regulations.
2. Benefitfocus has no responsibility or duty with respect to any plan that is not indicated by the Client as a COBRA-Eligible Plan. Benefitfocus' responsibilities and duties with respect to COBRA are limited to those expressly provided in this Appendix.

**H. Member Call Center:**

1. Includes support of customer service calls and customer inquiries related to COBRA benefits.
2. Call center hours are 8 a.m. to 8 p.m., Eastern Standard Time Monday through Friday (Business Days only).
3. Call center operations team will be trained to have proper knowledge to be able to answer questions regarding the COBRA Administration.

**I. Responsibilities:**

1. Benefitfocus will support the browsers in accordance with the then-current list located at: [www.benefitfocus.com/support/browsers](http://www.benefitfocus.com/support/browsers).

2. Client shall provide complete demographic and benefit information to Benefitfocus for Client's current Covered Employees, Qualified Beneficiaries and COBRA Continuant on or by the date agreed upon during the implementation process for the Client.
  3. Unless directed otherwise by Benefitfocus, Client will provide notice of a Qualifying Event by providing an electronic file or via direct entry within the *Benefitfocus Benefitplace*. Client is solely responsible for determining whether an employee, spouse or dependent has experienced an initial Qualifying Event under the COBRA-Eligible Plan and the date of the Qualifying Event. Client will notify Benefitfocus of a second Qualifying Event should Client be notified of a second Qualifying Event that occurs with respect to an employee, spouse or dependent within five (5) calendar days.
  4. Benefitfocus will hold Client responsible for reconciling Carrier billings with the online reports provided by Benefitfocus through the COBRA Employer Portal. Benefitfocus shall not be liable for paying any loss or damage (including premiums) to Client with respect to any retroactive termination of COBRA coverage, provided that Benefitfocus has performed in accordance with this Appendix. Benefitfocus reserves all rights to decline to implement any retroactive changes in premium rates beyond thirty (30) calendar days if rate change notification is received after the notification period expected per Section II. I 5. below.
  5. Benefitfocus will hold Client responsible for selecting a determination period and establishing and advising Benefitfocus of the applicable premium rates to be charged for COBRA continuation coverage. Client must notify Benefitfocus in writing at least sixty (60) calendar days in advance of the applicable billing date of any changes in premium rates affecting COBRA coverage under the plan and at least sixty (60) calendar days in advance of the applicable billing date of any changes in premium rates during an open enrollment period.
  6. Client will be responsible for differences in premium payments when notification of premium rate changes is not provided to Benefitfocus at least sixty (60) calendar days in advance, causing payments made by COBRA Continuant to be incorrect for the new determination period.
  7. Client will be responsible for fees incurred by Benefitfocus for any returned checks or ACH transactions, either from Client or COBRA Continuant.
  8. Client shall advise Benefitfocus of any changes in the benefits and options provided by the COBRA-Eligible Plan.
  9. Client will be responsible for complying with the Patient Protection and Affordable Care Act ("PPACA") of 2010, including but not limited to any required reporting for COBRA participants, the Employee Retirement Income Security Act of 1974 ("ERISA"), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Internal Revenue Code (the "Code"), and other applicable laws and regulations, other than those specifically governing the COBRA Administration provided by Benefitfocus hereunder.
  10. Client will maintain and provide written internal compliance procedures used for notifying Benefitfocus of a newly Covered Employee, spouse or dependent, a Qualifying Event, a report of terminations for each tax year, or when there are premium rate and benefit changes in the event of an IRS or any third party audit.
  11. Client will provide Plan and benefit descriptions (*e.g.*, Summary of Benefits and Coverage, Summary Plan Description and benefit plan booklets, etc.) to qualified beneficiaries during open enrollment.
  12. Client will be solely responsible for maintaining and providing the following information in the event of an IRS or any third party audit: written internal compliance procedures used for notifying Benefitfocus of a newly Covered Employee, spouse or dependent, a Qualifying Event, a report of terminations for each tax year, or when there are rate and benefit changes.
  13. Client will provide the release of any information reasonably necessary for COBRA compliance and administration under this Appendix.
  14. To the extent that the Target Go Live Date noted in the Order Form is the same as the applicable plan year start date, Client will work with previous administrator to manage and administer open enrollment efforts including, the mailing of plan documentation and receipt and record keeping of enrollment changes for the upcoming plan year. If Client expects Benefitfocus to manage and administer such open enrollment efforts, further pricing and scoping via a subsequent contract signed by the parties is required.
- J. **Client acknowledges and agrees that:**
1. Benefitfocus will have no duty with respect to the funding of premiums by Client or COBRA Continuant.
  2. Benefitfocus will not be liable for paying any premiums of a Qualified Beneficiary to Client to the extent that Benefitfocus did not receive the corresponding payment from the Qualified Beneficiary, Client or third party.
  3. Benefitfocus will not be liable for any failure of Client to remit to the Carriers of the plan any funds that Client receives from Benefitfocus.
  4. Benefitfocus will not be liable for any failure of Client to reconcile its Carrier billings to online reports provided by Benefitfocus through the COBRA Application.
  5. Benefitfocus will not be liable for any retroactive premium rate changes requested by Client.
  6. Benefitfocus will not be responsible for failure of delivery of any notice mailed by Benefitfocus using the Qualified Beneficiary information provided to Benefitfocus by Client.
  7. Benefitfocus will not be responsible for any loss or damage suffered by any COBRA Continuant, Client or plan, should Benefitfocus fail to give a required notice or a complete notice because Benefitfocus did not receive notice of an event for which a notice was required, Benefitfocus did not receive complete information or Benefitfocus received incorrect information.

**K. Carrier Notifications:**

1. Benefitfocus' standard practice is to notify the applicable Carrier of a Qualified Beneficiary's enrollment in changes to, or termination from, COBRA coverage ("Carrier Notifications"). If Client instructs Benefitfocus instead to send all such Carrier Notifications to Client or to a third party other than the Carrier, Client (a) shall provide the Carrier such updates in a timely manner; and (b) is liable for any fees associated with providing such Carrier Notifications.

**III. Additional Terms and Conditions:**

**A. For the COBRA Administration:**

1. Client is solely responsible for reconciling its Carrier billings to its active COBRA Continuant for periods prior to the Effective Date of this Appendix and to communicate any such changes to the applicable Carriers.
2. Client will be solely responsible for the review and payment of all claims under the Client benefit plan and ERISA, including, without limitation, claims for benefits under the Client benefit plan.
3. Client will review and be responsible for the payment of all claims under the Plan and ERISA, including, without limitation, claims and appeals for benefits and claims and appeals for eligibility determinations under the plan. Benefitfocus is not responsible for receiving or reviewing claims for benefits under the plan and will not be liable for the payment or funding of any claims for benefits in connection with the plan, including, without limitation, where sought as damages in an action against Client or the plan, or for any activity or occurrences prior to the Effective Date of the Order Form, provided that such failure did not result from the services performed by Benefitfocus in accordance with this Appendix.
4. Benefitfocus will not be responsible for any loss or damage suffered by any participant, continuant, the Client or the Client benefit plan, should Benefitfocus fail to give a required notice because Benefitfocus did not receive notice of an event for which a notice was required or the proper address to which the notice was to be sent.
5. Benefitfocus will not have a duty with respect to the funding of premiums by Client or qualified beneficiaries who elect COBRA.
6. Benefitfocus will not be liable for paying any premiums of a qualified beneficiary to any party other than the Client.
7. Benefitfocus will not be liable for any failure of Client to remit to the insurers or third party administrators of the Client, the benefit plan funds that Client receives from Benefitfocus.
8. Benefitfocus will not be liable for any failure of Client to reconcile its carrier or third party administrator billings to online reports provided through the COBRA Application.
9. Benefitfocus will not be liable for any failure of Client to modify its carrier or third party administrator billing and notify insurers of a COBRA Continuant's termination from COBRA coverage when Benefitfocus remits premiums paid by continuants to Client.
10. Benefitfocus will not be responsible for failure of delivery of any notice mailed by Benefitfocus using the qualified beneficiary information provided to Benefitfocus by Client.
11. Benefitfocus will not be responsible for inaccurate notification or premium payment errors, to the extent applicable to the COBRA Administration, except to the extent such inaccurate notification or errors are caused by Benefitfocus.
12. Plans not set up within the *Benefitfocus Benefitplace* in accordance with Benefitfocus requirements will not be included in the COBRA Administration.
13. Client will be solely responsible for complying with ERISA, the Internal Revenue Code, HIPAA, COBRA and any other applicable federal, state and local laws with respect to the Client Plan.
14. Benefitfocus Custodial Account: Client appoints Benefitfocus as custodian for the purposes, and upon the terms and conditions set forth in this Appendix, and will cause Benefitfocus to accept such appointment and agree to act as custodian hereunder and to hold any Client funds received hereunder in accordance with following the terms and conditions set forth in this Appendix. At all times, the assets comprising each of Client's funds in the Custodial Account will be considered a separate sub-account for purposes of this Appendix. Depending upon the context, the term "Custodial Account" will refer to either the separate sub-account for Client or all of the sub-accounts for all employers in the aggregate. Custodial funds provided to Benefitfocus by Client for the payment or funding of any claims for benefits in connection with the Client Plan, including, without limitation, where sought as damages in an action against the Plan ("Client Funds") will be held in a Benefitfocus-owned Custodial Account.
  - a. COBRA Custodial Account: Benefitfocus will open and maintain one or more depository accounts (the "Custodial Account") at Healthcare Bank (the "Bank"). Benefitfocus will deposit in the COBRA Custodial Account all payments received from qualified beneficiaries, less any portion of the payment that constitutes administrative fees payable by the qualified beneficiary. Upon deposit, such payments will become "Client Funds" (minus any applicable fees or other costs as set forth in this Appendix). For administrative convenience and to reduce costs, Benefitfocus will hold Client Funds of the Client together with similar funds from other clients in the Custodial Account (or one or more Custodial Accounts). However, Benefitfocus will maintain records as to the exact amount of funds of each client so that each client has a legal right to the specific amount of funds held in the Custodial Account (minus any applicable fees or other costs as set forth in this Appendix).
    - i. For the COBRA Administration, Benefitfocus will forward COBRA qualified beneficiary health insurance premiums from the Custodial Account to a single bank account opened and maintained by the Client and in accordance with this

Appendix and Client's group benefit plan. Benefitfocus will neither have, nor shall be deemed to have, any discretion, control, or authority with respect to the disposition of Client Funds.

15. Benefitfocus and Client intend and agree that Client Funds are, and shall remain, the general assets of Client, are not the general assets of Benefitfocus, and are not plan assets within the meaning of ERISA. Except to the extent that outstanding checks have been written against the account on behalf of Client, and to the extent applicable to the COBRA Administration, Client Funds may be withdrawn by Client at any time (minus any applicable fees or other costs as set forth in this Appendix) and are subject to Client's creditors in the same manner as funds contributed to Client's ordinary checking accounts.
16. Benefitfocus and Client acknowledge and understand that Benefitfocus may receive interest income from time to time on the funds held in the Custodial Account and that any such interest income received by Benefitfocus on Client Funds will be the sole property of Benefitfocus. Client acknowledges and understands that compensation otherwise charged by Benefitfocus for the COBRA Administration under the Appendix would be higher if it did not retain such interest on these funds. The period during which interest income may be earned begins on the dates Client Funds are transferred to the Custodial Account and ends when this Appendix terminates. Funds will be disbursed on a first-in-first-out basis.
17. Fiduciary Status: In addition to the rights and obligation of the Parties, the following provisions will also be incorporated into this Appendix:
  - a. Plan Fiduciary: Benefitfocus and Client agree that Benefitfocus is not the plan administrator, a Named Fiduciary, and is not a plan fiduciary under the Plan(s), as such terms are described under ERISA. Benefitfocus will have no power or authority to waive, alter, breach or modify any terms and conditions of the Plan. Benefitfocus will make payments or distributions from the Custodial Account in accordance with the framework of policies, interpretations, rules, practices and procedures set forth in the Plan, this Appendix and as otherwise agreed upon or directed by Client. Benefitfocus will neither have, nor shall be deemed to, exercise any discretion, control, or authority with respect to the disposition of Client funds. Client agrees that use of or offset of amounts in the Custodial Account to pay for fees or other amounts due to Benefitfocus under this Appendix, or any other agreement between the Parties, will constitute a Client action that is authorized by Client under this Appendix. Client agrees that such actions are not discretionary acts of Benefitfocus and do not create fiduciary status for Benefitfocus. Benefitfocus agrees that it will perform COBRA Administration on the Plan's behalf, as set forth in this Appendix and any attachments or other exhibits. However, Benefitfocus will not undertake any duties or responsibilities, regardless of whether they are set forth in the plan, if such actions are in violation of any applicable laws or regulations.
18. Client Plan Data: Upon termination of this Appendix, Benefitfocus will maintain Client's records in an electronic format as required by law. Following such termination, Benefitfocus will cooperate with Client (or Client's subsequent service provider) to affect an orderly transfer of Client Data covered by the Appendix in a generally commercially available media and format.
19. Notwithstanding anything to the contrary within this Appendix, the Agreement or the applicable Order Form, Benefitfocus reserves the right to increase fees to Client at any time that are caused by Federal postal rate increases, are due to Federal legislative changes, or are due to the provision of additional services to Client by Benefitfocus that were not included in or contemplated by this Appendix on the Effective Date. Benefitfocus will provide Client with thirty (30) days written notice of fee changes resulting from Federal postal rate increases or Federal legislative changes.
20. Client agrees to assist Benefitfocus as needed with any communication or issue resolution with any required third parties and Authorized Users.
21. Neither Party shall be liable for any delay caused by the other Party, or their respective contractors, agents, employees, or vendors.
22. Benefitfocus shall not make or be liable for any determinations regarding eligibility, and Client shall be responsible for making all determinations regarding Authorized User eligibility for Client's Plan(s).

This Appendix (the "Appendix") is subject to all the terms and conditions of the Client Services Agreement (the "Agreement") and the applicable order form ("Order Form"), by and between Client and Benefitfocus and provides reimbursement plan administrative services for flexible spending account(s) ("Reimbursement Plan Services" or "Flexible Spending Account Services"), Benefitfocus and Client are each individually a "Party" and collectively the "Parties."

### I. Definitions:

- A. Capitalized terms that are not defined in this Appendix shall have the meanings set forth in the Agreement.
1. "Account Plan" means a benefit plan, offered by a Client, to the extent that it covers the Accounts that are serviced by Benefitfocus pursuant to this Agreement
  2. "Accounts" mean FSA and similar tax-qualified reimbursement account types.
  3. "Bank" means the bank selected from time-to-time to be the bank for processing payments of Participants and Clients.
  4. "Business Days" means Benefitfocus business days, which exclude weekends and holidays
  5. "Card" means the prepaid benefits card issued by Benefitfocus for purposes of benefit administration by Benefitfocus for use by Participants with Accounts.
  6. "Client Account" means one bank account opened by Client and maintained for the purposes of providing the Issuing Bank with a means to access funds to make reimbursement payments.
  7. "Card Payments" means Account payments made by means of the Card and all Card-related fees charged to Participants.
  8. "Covered Employee" means an employee that has enrolled in the employer's Plan(s), also "Member".
  9. "Dependent" means a person who obtains insurance coverage through either an Individual or an employee of an Employer Client.
  10. "EFT" means an electronic funds transfer (EFT) which is the electronic transfer of money from one bank account to another.
  11. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.
  12. "For the Benefit of" means a bank account that is used for processing payments for the benefit of Client at the request of Client.
  13. "FSA" means Flexible Spending Account.
  14. "Insurance Plan" means any product supported by Carriers in which an employee can enroll and for which premium amounts will be charged and collected.
  15. "Issuing Bank" means the bank selected by Benefitfocus from time-to-time to be the issuer of the Card.
  16. "Notional Accounts" are Accounts that are balance sheet entries, not actual bank accounts, of contributed funds. For purposes of this Appendix with Client, Notional Accounts include FSAs.
  17. "Participant" means a person who is enrolled in Account(s) through the Client, or whose enrollment has been terminated, but who may still apply for reimbursements. "Employment Status", and "Closed" have the meanings ascribed to them in Plan Design Guide developed during implementation and configuration. in accordance with the instructions received at the direction of the Client. Client shall be responsible for updating Benefitfocus of a change in the status of any Participants.
  18. "Plan" means a benefit plan, offered by a Client, to its employees or former employees. Plans include benefit types otherwise defined herein including Account Plans, Insurance Plans and COBRA-Eligible Plans.

### II. Reimbursement Plan Services (including Account Set Up):

*Client has adopted a Flexible Spending Account (FSA). Collectively, the foregoing arrangements and plans shall be referred to as the "Plan". Reimbursement Account participants are defined as those individuals who are eligible to receive reimbursement from their account based on Client's Plan document (each individually a "Participant" and collectively the "Participants"). Participant counts for billing purposes are determined on the first business day of each month. Participants that lose eligibility to receive reimbursement after the first business day of a month will be dropped from the count on the following month's invoice.*

- A. **Benefitfocus Responsibilities for "Notional Accounts":** Benefitfocus agrees to provide Notional Account administration services described:
1. **Client and Accounts Plan Setup:** Applicable for all Notional Accounts.
    - a. Benefitfocus will setup Client in the Application using the customized design guide completed by Benefitfocus and the Client (the "Design Guide").
    - b. Benefitfocus will provide Client configuration up to five (5) divisions including reports, Cards, communications. Additional divisions require scoping and pricing and a writing signed by the parties.
    - c. Benefitfocus will provide Client implementation management and administrative consultation.
    - d. Benefitfocus will provide file setup per agreed-upon format required by Benefitfocus.
    - e. Additional data migration requirements, such as activity history, require further scoping and pricing. To the extent Client requests additional historical data loads, Benefitfocus will provide sales support to scope and price a solution, to the extent practical by Benefitfocus. Benefitfocus will provide training tools and documentation for Client to use portals and processes.
  2. Enrollment Eligibility and Maintenance:
    - a. Benefitfocus will complete initial enrollment set up and ongoing account maintenance of all Participants on the Application via file-based processing standards as agreed upon with Client.

- b. Benefitfocus will provide administration services in support of mid-year enrollment scenarios including Client's hiring of new employees and existing employees experiencing a qualified life event.
  - c. Benefitfocus will administer changes in elections received from Client for Notional Accounts.
  - d. Benefitfocus will submit files to the Card vendor daily to generate Cards as required by the enrollment file.
  - e. Benefitfocus will provide data verification and error processing.
  - f. Benefitfocus will provide standard instructions to Client regarding payroll application, contribution submission and any other applicable Client responsibilities, per processes and verbiage agreed upon during the implementation.
  - g. Benefitfocus will provide technical services and data quality support – technical and integration maintenance teams, proactively managing all technical aspects of Client's relationship with Benefitfocus.
  - h. Benefitfocus responsibilities for administering enrollment eligibility and maintenance services will be dependent on the receipt of timely and accurate information from employees and verification of new hire and life event scenarios by the Client.
3. **Renewal Management:**
    - a. Benefitfocus will execute renewal, rollover, and/or new plan configuration for existing Client receiving services hereunder.
    - b. Benefitfocus will provide standard open enrollment communication materials to Client and process new Plan year enrollments per Benefitfocus' standard processes. Standard open enrollment communication materials include FAQ and Quick Fact guides that can be distributed to consumers. Non-standard materials can be priced and scoped and will require a writing signed by the parties.
    - c. Benefitfocus will execute plan year close-out balance reporting and non-discrimination testing as requested. Non-discrimination testing can be conducted for an additional fee.
  4. **Client Termination In Accordance with the Agreement and this Appendix:**
    - a. If Client's effective date of service termination is the end of the Client's Account Plan year, Benefitfocus, as requested by Client and approved by Benefitfocus, will provide claims service through the end of the Account Plan's run-out period, defined per the Design Guide. Claims that have been post marked or uploaded prior to the end of the run-out period will be processed within the subsequent fourteen (14) calendar days. At the end of the fourteen (14) calendar days, Benefitfocus will provide to the Client, Account Plan balance, claims and forfeiture reporting and settle any outstanding financial obligations.
    - b. If the Client's effective date of service termination is not the end of the Client's Account Plan year, or service during the run-out period was not requested by Client or approved by Benefitfocus, any claims that have been post marked or uploaded prior to the termination date will be processed within the subsequent fourteen (14) calendar days. At the end of that fourteen (14) calendar days, Benefitfocus will provide to the Client, Account Plan balance, claims and forfeiture reporting; and settle any outstanding financial balances.
    - c. Upon the date of Client termination, or the end of the runout period, if service was mutually agreed to per this Section, Cards will be deactivated and the applicable portal access will be disabled.
  5. **Contribution Processing:**
    - a. Benefitfocus will post notional (non-cash) contributions per standard processes outlined in the Design Guide, and as agreed upon with the Client, which include file based and assumed contribution posting.
    - b. Client agrees to submit contribution data to Benefitfocus before each applicable payroll date. Data will be submitted in appropriate Benefitfocus format, or for an additional fee, Benefitfocus can provide data transformation services to ensure data is in needed format for processing.
    - c. The Participant's allocations will be available to the Participant for payment, reimbursement, and, if available, Card use per contribution schedule outlined in the Design Guide.
  6. **Claims Processing:**
    - a. Benefitfocus will receive, and adjudicate for payment, claims and other requests for payment from multiple sources, including Claims Substantiation Carrier Files, Card, WEX consumer portal upload, mobile upload, manual/paper mail and fax submission, and recurring claims.
    - b. If Client chooses to utilize claims substantiation carrier files, it is the responsibility of the client to work with respective carriers to submit files in the agreed upon format. Benefitfocus will not be responsible for any costs associated with the development or submission of these files.
    - c. Benefitfocus will receive and process all claims, requests for payment, and appeals, including external reviews, for expenses presented for payment in accordance with IRS guidance regarding substantiation, the terms of the Notional Accounts, and any written claim procedures or other practices established by the Client and communicated to Benefitfocus.
    - d. Benefitfocus will process all claims and appeals within the time periods and in the manner required under ERISA. Benefitfocus will maintain claim reimbursement files for seven (7) years, in accordance with applicable law.
    - e. Benefitfocus will process payments of claims and other requests for payment according to requirements specified by IRS regulations and the Client in the Design Guide (which Client will complete in consultation with the Benefitfocus team) and

- which Benefitfocus will use to capture the Account Plan rules and settings, and Benefitfocus will use to configure the Application.
- f. Benefitfocus will administer the run-out period, allowing Participants the ability to access their funds for eligible claims in accordance with instructions provided by the Client to Benefitfocus on the Design Guide.
  - g. Client will escalate to Benefitfocus any complaint regarding services as soon as administratively feasible.
7. Payment and Reimbursement Processing:
    - a. Benefitfocus will make available the following payment/reimbursement options to Participant as elected by the Client per the Design Guide:
      - i. Check to Participant
      - ii. Check to Participant's provider ("Provider")
      - iii. EFT to Participant (Direct deposit)
      - iv. Card
    - b. Reimbursements may be requested by the Participant via use of the Card, online portal or mobile reimbursement to self or payment to alternate payee (*i.e.*, online bill pay) or via written request to the Health Account Services team.
    - c. Benefitfocus will run a daily check and a daily NACHA cycle to pay and/or reimburse Participants and Providers.
    - d. Payments and reimbursements will be paid out of the "Reimbursement Account", a business bank account owned by Benefitfocus at the agreed-upon financial institution for the purpose of Notional Account Funding and payment processing.
  8. Card Management:
    - a. Benefitfocus will provide Participants with access to the Card as a payment method, per the Client's Design Guide.
    - b. Lost Cards may be reported online or to consumer services. Replacement and additional Cards can be ordered through the call center or online for an additional fee.
    - c. Benefitfocus will auto substantiate claims using:
      - i. Copay matching logic (copays provided to Benefitfocus in the Design Guide)
      - ii. Inventory Approval System
      - iii. Recurring transactions
    - d. Benefitfocus will only allow Cards to be used for eligible expenses as defined by the Account Plan parameters in the Design Guide. Benefitfocus shall not allow the Card to be used for cash withdrawals or any other purpose at ATMs or to obtain cash back from a merchant.
    - e. Card settlement will occur electronically via ACH as often as nightly, against the Client's bank account as defined in the Design Guide.
  9. Payment and Claims Funding:
    - a. Benefitfocus shall establish a process under which Client shall fund Notional Accounts using claims-based funding, which gives Benefitfocus authorization to draft applicable amounts from the Client's account to fund the Reimbursement Account as needed for approved claim payments, which are otherwise specified by the Client in its Account Plan document, or as provided for under the Internal Revenue Code.
    - b. The ACH transaction process will debit from a single Client checking account and transfer to the Reimbursement Account the exact amount necessary to cover such claims funding and payment requirements. Benefitfocus will draw funds via ACH from the Client's bank account as frequently as nightly, as needed for all payments. Requests for additional bank accounts will be subject to additional scoping and pricing and require a writing signed by the parties. Client will pre-fund Client checking account on or before the Target Go Live Date to validate proper funds to cover claims and reimbursement requests.
    - c. Benefitfocus will notify Client in advance by email advising that funds will be drawn from Client's account. For security purposes, the amount to be drawn will not be included in the email. A link will be provided that will allow Client to log in to the Employer portal to see a report that will contain the amount that will be drawn from their account.
    - d. Card transaction settlement account changes provided to Benefitfocus will be communicated to the Bank within one (1) Business Day of receipt.
  10. Establishment of Account: Benefitfocus will enter or receive data needed to establish an individual Account for each Participant and track each type of contribution made to each Notional Account separately.
  11. Contribution Processing:
    - a. Receive and Transmit Contributions: Benefitfocus will receive and transfer via wire or ACH to the Custodial Bank as soon as administratively feasible consistent with the standards set forth by the Department of Labor in 29 C.F.R. Sec. 2510.3-102, payroll deduction and Client contributions, and individual contributions, if any, from third parties.
  12. Distribution Processing:
    - a. Distributions may be requested by the Participant via use of the Card, online portal reimbursement to self or payment to alternate payee (*i.e.*, online bill pay) or via written request to the Health Account Services team.



## Appendix E: Consumer Directed Healthcare Accounts (Flexible Spending Account Services)

- b. Benefitfocus will make available the following payment/reimbursement options:
  - i. Check to Participant
  - ii. Check to alternative payee, *e.g.*, Provider, healthcare merchant
  - iii. EFT to Participant (Direct deposit)
  - iv. Card
- c. Benefitfocus will run a daily check and a daily NACHA cycle to process EFT's.

### B. Administration in Accordance with Law:

1. Benefitfocus shall administer FSAs in accordance to applicable laws and regulations.
2. Benefitfocus shall consistently and timely communicate and educate Client and Participants of such applicable laws and regulations impacting plans in force.
3. Pursuant to ERISA section 405(c)(1), Benefitfocus represents the interests of the Client, who is the fiduciary, to the extent it is making initial claims payments and denials, performing appeals (including as required under the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010 and any guidance issued thereunder), issuing any notices required by ERISA with respect to claims and appeals and to the extent that the actions necessary to perform its obligations and duties under this Appendix constitutes fiduciary action under ERISA.
4. Medicare Secondary Payer (MSP) Reporting: Benefitfocus will submit the applicable Medicare Secondary Payer (MSP) reporting to CMS on behalf of the Client. SSNs are required in the *Benefitfocus Benefitplace* in order to report this information. Client shall be responsible to collect and provide to Benefitfocus in an electronic format all required information to ensure compliance with the MSP Secondary Payer rules and regulations Client shall be solely responsible for determining its employees who are eligible to participate in the respective Plans, collecting the requested information from employees and informing Benefitfocus of such affected or eligible employees.

C. **Legal Plan Documentation:** The Client shall determine the benefit and administrative provisions of the Plan. The Client shall be solely responsible for the terms of the Plan(s) and/or the Summary Plan Description.

### D. Consumer Call Center and IVR:

1. Support of customer service calls and customer inquiries: Benefitfocus has a toll-free number for both Client and Participant support.
2. Call center operations will be trained to have proper knowledge of Benefitfocus product designs, and able to answer questions regarding all FSA accounts from Participants and Client. All inbound calls are recorded and used for training purposes. Recorded calls attributable to Benefitfocus assigned phone numbers are stored for thirty-six (36) months. If extended storage timeframe needed, increased data storage fees may apply.
3. Hours of call center live support are 8:00 a.m. to 8:00 p.m. Eastern Standard Time, on Business Days, Monday through Friday and excluding Benefitfocus holidays.
4. Benefitfocus will respond to and address all account inquiries including appeals and grievances.
5. Benefitfocus provides 24 hour/ 365 days per year IVR access for account balance information. The Benefitfocus-hosted IVR is configured for Benefitfocus-specific business. From time-to-time, maintenance will be performed on the IVR.
6. Benefitfocus will respond to oral and written (email) questions from Client and Participants (subject to applicable privacy laws), and maintain the privacy of Participants using HIPAA-compliant procedures for storage and disposal of PHI.
7. Benefitfocus will provide multi-lingual consumer support.

### III. Client agrees to provide and be responsible for the following services with regard to the Reimbursement Plan Services:

- A. **Participants:** Client shall provide Benefitfocus with a complete list of all employees eligible to participate in the Plan through the *Benefitfocus Benefitplace*, and any other demographic and related information that Benefitfocus need to properly administer the Plan pursuant to this Appendix, including but not limited to SSN. Client shall notify Benefitfocus of all changes, through the *Benefitfocus Benefitplace*, in its employees eligible to participate in the Plan. Client shall be solely responsible for determining its employees who are eligible to participate in the respective Plans, collecting the requested information from employees and informing Benefitfocus of such affected or eligible employees.
- B. **Contributions:** Client shall contribute funds into the Notional Account to be used to pay Plan benefits or other Plan expenses as agreed to herein and in accordance with the Plan. Contributions to the Notional Account shall consist solely of general assets of Client. Participant contributions, if any, made by employees to the Plan through salary reduction or otherwise, shall be used to reimburse Client for contributions advanced by Client to pay benefits under the Plan.
- C. **Enrollment:** Client shall assist in the enrollment of the employees in the Plan, through the *Benefitfocus Benefitplace*, cooperate with Benefitfocus with regard to proper settlement of all benefit claims and transmit any inquiries pertaining to the Plan to Benefitfocus. Late notification of Plan eligibility or incorrect Plan eligibility information provided by Client to Benefitfocus may result in erroneous Plan benefit payments. In this event, Client shall be solely responsible for any such erroneous payment and Client shall also be solely responsible for collecting any such erroneous payments from the employee. If there are insufficient Client funds that are available to restore the erroneous payments or the requested reimbursement of funds would otherwise cause the Minimum Account Balance Deposit to become insufficient, Benefitfocus has the right to request immediate restoration of funds from Client directly and suspend or terminate all Reimbursement Plan Services under this Appendix.



## Appendix E: Consumer Directed Healthcare Accounts (Flexible Spending Account Services)

- D. **Amendments:** Client shall provide Benefitfocus with a copy of any contemplated amendment to the Plan no less than thirty (30) days prior to the anticipated amendment effective date. However, under no circumstances should Client adopt any amendment that would alter Benefitfocus' duties hereunder without prior written consent of Benefitfocus. In addition, Benefitfocus shall have no obligation to provide any Plan amendments or updates to Client for the Reimbursement Plan Services other than as described herein.
- E. **Plan Documents:** Client shall file with the appropriate governmental agencies all required returns, reports, documents and other papers relating to the Plan. Client shall distribute to Participants all materials and documents as may be necessary or convenient for the operation of the Plan or to satisfy the requirements of applicable law and Client shall remain responsible for the contents of all materials and documents.
- F. **Card Payments:** All Participants in the Flexible Spending Account shall automatically receive one card. Additional and replacement Cards can be obtained for a fee.
- G. **Ownership of Account Asset:** All amounts transferred by Client to the Notional Account, as described herein, remain Client's general assets. Benefitfocus or their representatives shall only be responsible for administering Client's funds in accordance with the terms of this Appendix.
- H. **Employee Fraud:** Client is solely responsible for making the Plan whole if fraud is committed against the Plan by Plan Participants or Client's employees. Benefitfocus shall not be responsible for pursuing or correcting any such actions.
- I. Client shall provide the release of any information necessary for Benefitfocus to perform the Reimbursement Plan Services provided under this Appendix.

#### IV. Additional Terms and Conditions:

##### A. For the Reimbursement Plan Services:

1. Benefitfocus will support the browsers in accordance with the then-current list located at: [www.benefitfocus.com/support/browsers](http://www.benefitfocus.com/support/browsers).
2. Benefitfocus shall not be responsible for the accuracy of any information provided by Client in preparation of any of the applicable reports nor shall Benefitfocus or be responsible for determining the level of compliance required by Client's Plan. It is the sole responsibility of Client to assure compliance with all legal reporting and disclosure requirements.
3. Client shall be solely responsible for the payment of all claims under Client Plan and ERISA, including, without limitation, claims for benefits and claims for eligibility determinations under Client Plan.
4. **External Review:** To the extent that the external review requirements set forth in 29 CFR § 2590.715-2719, shall apply to the Plan, Benefitfocus shall serve as a conduit for external review requests. In that regard, Benefitfocus shall send appropriate information to, and shall cooperate fully with, the external review organization conducting the review. Any fees and expenses related to a request for external review shall be paid by Client.
5. Benefitfocus shall not be responsible for inaccurate notification or premium payment errors, to the extent applicable to the Reimbursement Plan Services, except to the extent such inaccurate notification or errors are caused by Benefitfocus.
6. Plans not set up within the *Benefitfocus Benefitplace* in accordance with Benefitfocus requirements will not be included in the Reimbursement Plan Services.
7. Client shall be solely responsible for complying with ERISA, the Internal Revenue Code, HIPAA, COBRA and any other applicable federal, state and local laws with respect to the Client Plan.
8. Benefitfocus and Client acknowledge and understand that Benefitfocus may receive interest income from time to time on the funds held by Benefitfocus and that any such interest income received by Benefitfocus on such funds shall be the sole property of Benefitfocus.
9. **Funding:** Client will provide all necessary and sufficient funding for benefits to permit Benefitfocus to meet the Issuing Bank requirements and to fund all approved reimbursements.
10. **Failure to Transfer Funds:** Notwithstanding anything to the contrary contained in the Agreement or Order Form, if Client breaches its obligation to transfer funds to Issuing Bank pursuant to this Section, and this breach is not remedied within two (2) Business Days of notice, Benefitfocus shall have the right to terminate this Appendix immediately. Client is responsible for providing funds for all Notional Account transactions.
11. Each business day, Clients will make available the amount of funds, if any, that will be transferred by the Issuing Bank from the Client Account, to fully fund transactions that have settled over the past day. Client will transfer the amount using a method agreed upon by Benefitfocus and the Issuing Bank.
12. If at any point Client fails to meet the requirements or the covenants set forth herein, Benefitfocus or the Issuing Bank will provide Client with notice so that Client can correct, the shortfall. If such balance deficiency is not cured within two (2) Business Days of notice ("Grace Period"), Benefitfocus or the Issuing Bank may stop authorizing Card Payments and may suspend all services for Client under this Appendix for the period of time the required amounts are not provided, and Benefitfocus shall have the right to terminate this Appendix immediately. Client will be responsible for all outstanding obligations relating to funding reimbursements, including any Issuing Bank charges, penalties and interest in connection therewith. If Benefitfocus or the Issuing Bank deactivates Cards for any reason, it reserves the right to notify Participants directly of this action if Client has

- not done so within twenty-four (24) hours of notice of deactivation. Upon such deactivation, a reactivation fee of \$1 per account will be charged, payable prior to reactivation.
13. Client agrees to communicate all settlement account information changes to Benefitfocus and the Issuing Bank a minimum of five (5) Business Days prior to the new account's effective date and prior to revoking access to the existing account.
  14. Fiduciary Status: In addition to the rights and obligation of the Parties, the following provisions shall also be incorporated into this Appendix:
    - a. Claims Payment: To the extent applicable to the respective Reimbursement Plan Services, Benefitfocus shall have a duty only with respect to payment of properly presented benefit claims. All fiduciary duties are the responsibility of Client.
    - b. Plan Fiduciary: Benefitfocus and Client agree that Benefitfocus is not the plan administrator, the Named Fiduciary and are not a plan fiduciary under the Plan(s), as such terms are described under ERISA. Benefitfocus shall have no power or authority to waive, alter, breach or modify any terms and conditions of the Plan. Benefitfocus shall make payments or distributions from the Custodial Account in accordance with the framework of policies, interpretations, rules, practices and procedures set forth in the Plan, this Appendix and as otherwise agreed upon or directed by Client. Benefitfocus shall neither have nor shall be deemed to exercise any discretion, control, or authority with respect to the disposition of Client funds. Client agrees that use of or offset of amounts in the Notional Account or Custodial Account to pay for fees or other amounts due to Benefitfocus under this Appendix or any other agreement between the parties shall constitute a Client action that is authorized by Client under this Appendix. Client agrees that such actions are not discretionary acts of Benefitfocus and do not create fiduciary status for Benefitfocus. Benefitfocus agrees that it will perform the Reimbursement Plan Services on the Plan's behalf, as set forth in this Appendix and any attachments or other exhibits. However, Benefitfocus will not undertake any duties or responsibilities, regardless of whether they are set forth in the Plan, if such actions are in violation of any applicable laws or regulations.
  15. Client Plan Data: Upon termination of this Appendix, Benefitfocus will maintain Client's records in an electronic format as required by law. Following such termination, Benefitfocus shall cooperate with Client (or Client's subsequent service provider) to affect an orderly transfer of Client Data covered by the Appendix in a generally commercially available media and format.
  16. Notwithstanding anything to the contrary within this Appendix, the Agreement or the applicable Order Form, Benefitfocus reserves the right to increase fees to Client at any time that are caused by Federal postal rate increases, are due to Federal legislative changes or are due to the provision of additional services to Client by Benefitfocus that were not included in or contemplated by this Appendix on the Effective Date. Benefitfocus shall provide Client with thirty (30) days written notice of fee changes resulting from Federal postal rate increases or Federal legislative changes.
  17. Client agrees to assist Benefitfocus as needed with any communication or issue resolution with any required third parties and Authorized Users.
  18. Neither Party shall be liable for any delay caused by the other Party, or their respective contractors, agents, employees, or vendors.
  19. Benefitfocus shall not make or be liable for any determinations regarding eligibility, and Client shall be responsible for making all determinations regarding Authorized User eligibility for Client's Plan(s).