



JOHN TECKLENBURG
MAYOR

City of Charleston
South Carolina

KAY CROSS
DIRECTOR, HROD

Human Resources and Organizational Development

AGENDA

HUMAN RESOURCES COMMITTEE

AUGUST 28, 2019

Place: 75 Calhoun Street, HR Training Room

Time: 4:00 pm

1. Open with prayer
2. Approval of minutes for August 10, 2018, September 18, 2018 and October 10, 2018
3. New Business
 - A. Review and Approval of 2020 Healthcare Budget and contract renewals
 - BCBS South Carolina – Medical
 - Benefitfocus – Enrollment Platform and Total Comp. Stmts.
 - B. Defer Stop Loss Agreement
 - C. Worker's Compensation TPA RFP Selection and Contract approval
 - PMA
 - D. Success Stories from 2019
4. Old Business
5. Other Business
6. Adjournment

Cc: Councilmember James Lewis, Chair
Councilmember William Moody, Jr.
Councilmember Kevin Shealy
Councilmember Marvin Wagner
Councilmember Gary White, Vice Chair
Mayor John Tecklenburg
Amy Wharton, CFO
Joleen Deames, ACFO
Kay Cross, Director of HROD
Heather Pope, Deputy Director of HROD

**City of Charleston
2020 Budget Year**

Renewed the following vendors:

Healthcare TPA, HRA and Network:	Blue Cross Blue Shield of South Carolina
Dental TPA and Network:	United Concordia Dental
Vision:	EyeMed
HSA and FSA admin:	ConnectYourCare
Enrollment Platform/Comp Strmts:	Benefitfocus
Stop Loss Reinsurance:	TBD

Recommended Plan Design Changes:

	cost (savings)
Enhance the Dental Plan (Implants and Occlusal Guards)	35,000
Total Compensation Statements (in 2020)	6,242
	<u>41,242</u>
	<u>Estimated Costs</u>

Additional Changes:

Fund each HSA with \$350/\$700 (assume 132 enrollees)
Increase from \$300/\$600 and 125 enrollees

8,100 included in separate line

**City of Charleston
Healthcare Budget**

As of August 2019

	2019 Budget 1600	2020 Budget 1620	1.3%	NOTES:
Medical and dental costs	17,450,000	18,400,000		
Rebates	(137,500)	(1,000,000)		
Fully Insured vision plan	131,752	133,637		
Plan design changes	32,000	41,242		See recommended changes
Administration costs	864,024	911,816		
Stop Loss Fees	1,100,000	1,350,000		
HSA contribution	48,000	56,700		
HRA contribution	1,260,850	1,352,150	2.4%	City contributions \$350/\$700 City Contribution \$600/\$1250 400 enrollees/\$3.20 per enrollee per month
Flexible Spending Administration	15,360	15,360		
COBRA and Retiree Administration	15,510	16,260		
Wellness Program	53,500	53,500		Includes health fair (\$3.5k) and gym reimbursement (\$50k) up to 250 participants plus corporate membership
Filbils	28,000	28,000		Net cost of onsite fitness/yoga classes
Exercise Program	4,800	4,800		80 participants (per ROI report)
Diabetes Program	(128,240)	(128,240)		\$23 per shot for 500 people
Flu Shots	10,000	11,500		Wellness programs, Stress program, testing supplies, etc.
Other Wellness Programs	10,250	10,250		Wellness contributions to HRA or HSA
Well Check program	116,750	116,750		All in for Ten weight contest and weight loss classes
Weight Loss Program	11,600	11,600		
Firefighters Mental Health coverage	36,000	36,000		
Affordable Healthcare reporting	-	-		For '19 and '20, included in the administration costs
Affordable Healthcare Act Reinsurance fee (due 1/15/XX)	-	-		No reinsurance fee for 2017, 2018 or 2019
Affordable Healthcare Act PCORI fee (due 7/31/XX)	\$ 8,000	8,250		
	<u>20,930,656</u>	<u>21,429,575</u>	498,919	
Cost per enrollee	13,082 1.1%	13,228 1.1%		
Estimated Contributions				
Employees	3,285,480	3,400,343		See summary for 2020 premiums
Retirees	536,156	580,069		Retiree premiums includes 2% increase to city's contribution
Museum	245,427	298,026		100% of costs
Cobra	47,638	81,847		102% of costs
	<u>4,114,700</u> 20%	<u>4,360,285</u> 20%		
Net Budgeted Cost	<u>16,815,956</u>	<u>17,069,290</u>	253,334	
	388,100 2.4%	253,334 1.5%		Change

**City of Charleston
Administrative Fee**

	<u>2019</u>	<u>2020</u>	Increase
<u>Blue Cross Blue Shield of South Carolina</u>			
Admin Fee (rate lock thru 2023)	33.50	33.50	0%
My Health Essentials Suite	4.40	4.40	0%
Referral Mgmt.	0.55	0.55	0%
HRA	3.50	3.50	0%
RX admin fee	-	1.50	new
<u>United Concordia</u>			
Dental Fee	1.50	1.50	0%
<u>ConnectYourCare (rate lock thru 2021)</u>			
Cobra and Retiree billing (included in separate line)	2.50	2.50	0%
FSA (included in a separate line)	3.20	3.20	0%
HSA fee	2.35	2.35	0%
<u>Benefifocus</u>			
Enrollment Platform	2.10	2.10	0%
Third Party Administrative cost	864,024	911,816	

**City of Charleston, SC
Employee Bi-weekly Rates**

	2019 Rate	Increase	2020 Rate
Medical Premiums			
<u>Health Savings Acct.</u>			
Employee	19.29	0.21	19.50
Employee + Spouse	108.06	0.19	108.25
Employee + Children	75.90	0.10	76.00
Family	135.23	0.27	135.50
<u>Health Savings Acct. with a non-smoker discount</u>			
Employee	13.50	0.25	13.75
Employee + Spouse	75.64	0.11	75.75
Employee + Children	53.13	0.37	53.50
Family	94.66	0.34	95.00
<u>HRA Rates</u>			
Employee	37.54	0.21	37.75
Employee + Spouse	158.36	0.14	158.50
Employee + Children	120.07	0.18	120.25
Family	190.70	0.30	191.00
<u>HRA Rates with a non-smoker discount</u>			
Employee	25.74	0.76	26.50
Employee + Spouse	114.01	0.49	114.50
Employee + Children	85.25	0.25	85.50
Family	137.75	0.25	138.00
Vision Premiums			
Employee	0.82	0.18	1.00
Employee + Spouse	1.54	0.46	2.00
Employee + Children	1.64	(0.14)	1.50
Family	2.40	0.10	2.50
Dental Premiums			
Employee	3.68	0.07	3.75
Employee + Spouse	16.24	0.01	16.25
Employee + Children	12.04	(0.04)	12.00
Family	19.70	0.30	20.00

AMENDMENT TO ADMINISTRATIVE SERVICES AGREEMENT

This Amendment to Administrative Services Agreement ("Amendment") amends the Administrative Services Agreement ("Agreement"), effective January 1, 2013 entered into between City of Charleston ("Purchaser") and Blue Cross and Blue Shield of South Carolina ("BCBSSC"). This Amendment is effective January 1, 2020.

WHEREAS, Purchaser and BCBSSC have entered into the Agreement (as amended from time to time) whereby BCBSSC provides certain Services for Purchaser; and

WHEREAS, Purchaser and BCBSSC desire to enter into this Amendment to the Agreement.

NOW, THEREFORE, Purchaser and BCBSSC hereby agree that the Agreement is hereby amended:

by deleting Schedule A in its entirety and replacing it with the attached Schedule A, "Effective Date: (Contract Year) of this Schedule A: January 1, 2020 through December 31, 2020"; and

EXCEPT as otherwise set further herein, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, BCBSSC and Purchaser have caused their names to be signed hereto by their respective officers.

**BLUE CROSS AND BLUE SHIELD
OF SOUTH CAROLINA**
An Independent Licensee of the Blue Cross
and Blue Shield Association

By: _____

Vice President - Major Group Sales
Blue Cross and Blue Shield Division

PURCHASER

By: _____

Witness _____

Its: _____

Date _____

(Signature and Title)

Blue Cross and Blue Shield of South Carolina Schedule A

Purchaser Name: City of Charleston

Purchaser Base Number (s): 03-57596

Effective Date: (Contract Year) of this Schedule A: January 1, 2020 through December 31, 2020

Administrative Charges:	
January 1, 2019 through December 31, 2023	\$33.50 per Employee per month (PEPM)
Inter-Plan Arrangements Fees:	
BlueCard Program Fees:	
Access Fees: (*)	Up to 3.97% of network savings, but not to exceed \$2,000.00 per claim. Note: Access Fees will apply when Members receive services outside of the service area in which they reside. (The access fee percentage will be up to the currently allowable BlueCard Program rate based on account size. Rates are subject to annual revision.)
Administrative Expense Allowances (AEAs): (*)	Up to \$5.00 per claim professional and \$11.00 per claim institutional. (This fee may include Non-Participating Provider Claim fees and Blue Cross Blue Shield Global Core AEA fees.)
Other BlueCard Program Fee: (*)	
Other Fees:	
Claim Amount Account Funding Method:	By the deadline set forth in Article V of this Agreement.
Late Charge:	1% per month or such other maximum amount allowed by law
Retention Services Fee:	7.5% of the claims processed for twelve months from the date of termination.
Enhanced Recovery Fee:	30% of all recoveries
Group Litigation Fee:	30% of all recoveries
Subrogation Fees:	30% of all recoveries
Pharmacy Clinical Management Admin Fee	\$1.55 (PEPM)
Health Care Services Product Fees:	
Health Reimbursement Account (HRA)/Health Incentive Account (HIA):	\$3.50 per Employee per month (PEPM) (Applies only to sub-groups: 06-09,25,27,30-33,38-40)
Telehealth American Well BCOD:	No additional fee
Engagement Suite Standard Programs:	\$4.40 per Employee per month (PEPM) Suite includes: Health Coaching - Chronic Condition and Lifestyle, Essential Advocate, Rally- Wellness Engagement and Proactive Member Messaging
Onsite Comprehensive Care Management:	\$700 for Home Visit, then Monthly Case Rate of \$750
Radiology Management (NIA):	\$0.55 per Employee per month (PEPM)

**Blue Cross and Blue Shield of South Carolina
Schedule A**

IN WITNESS WHEREOF, BCSSC and Purchaser have caused their names to be signed hereto by their respective officers.

BLUE CROSS AND BLUE SHIELD OF SOUTH CAROLINA
An Independent Licensee of the Blue Cross and Blue Shield Association

By: 
Title: Vice President, Major Group Sales
Blue Cross and Blue Shield Division

PURCHASER
City of Charleston

By: _____

Witness _____

Its: _____

Date _____

(Signature and Title)

AMENDMENT NO. 3 TO AGREEMENT TO PURCHASE NO. 1

This Amendment No. 3 (“Amendment”) to the Agreement to Purchase No. 1 dated September 27, 2011 (“ATP”), is between Benefitfocus.com, Inc. (“Benefitfocus”) and City of Charleston (“Client”) and is made effective as of January 1, 2020.

WHEREAS, the parties entered into the ATP in order for Benefitfocus to provide Client with certain software services; and

WHEREAS, the parties agree to extend the term, and

WHEREAS, the parties agree to amend the ATP under the terms and conditions of this Amendment and include said modifications.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound Benefitfocus and Client hereby agree as follows:

1. **Term.** The Initial Term of the ATP shall be extended to December 31, 2020. At the conclusion of the initial term, this ATP shall automatically renew for not more than four (4) additional one year terms (each individually a renewal term) unless either party provides notice of intent to not renew not less than ninety (90) days prior to the end of the then current term.
2. **Prior Agreement.** Except as expressly amended herein, all other terms and conditions as set forth in the ATP shall remain in full force and effect. The ATP shall remain and continue in full force and effect, and shall continue to be binding on the parties hereto. This Amendment is hereby incorporated into the ATP and by reference. To the extent that there is any inconsistency between the ATP and this Amendment, this Amendment shall prevail. Capitalized terms used herein shall have the same meanings as are set forth in the ATP, as applicable, unless stated otherwise.
3. **Authority to Enter into an Agreement.** Each party represents and warrants that (i) it has all requisite corporate power and authority to enter and perform pursuant to this Amendment; (ii) the execution, delivery and performance of this Amendment and the consummation of the transactions contemplated hereby have been duly and properly authorized by all requisite corporate action on its part; (iii) this Amendment has been duly executed and delivered by such party; and (iv) no other person or entity other than those set forth in this Amendment has any interest in the subject matter referred to in this Amendment.

All terms and conditions of the ATP which are not hereby amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereto by their duly authorized representatives executed this Amendment.

BENEFITFOCUS.COM, INC.

CITY OF CHARLESTON

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Pursuant to the terms and conditions set forth in the Client Services Agreement ("Agreement") between Benefitfocus.com, Inc. ("Benefitfocus") and City of Charleston ("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.

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. Contract Number:	
2. Client Name:	City of Charleston
3. Address:	On File
4. Effective Date:	August 16, 2019
5. Target Go Live Date:	12/15/2019
6. End of Initial Term:	Coincides with the Agreement to Purchase No. 1 dated September 27, 2011
7. Employee Count:	On File
8. Account Executive:	Sara Siegel
9. Solutions Engineer:	Ben Pistole
10. Client Contact (name, email):	On File
11. Invoice Contact (name, email, address, and county):	On File
12. Duplicate Invoice: (Yes/No):	No
13. Duplicate Invoice Contact Information (name, email, address):	Not applicable
II. Services:	
IMPLEMENTATION & SOFTWARE SERVICES	
<input type="checkbox"/> BENEFITFOCUS® MarketPlace for Employers Software Services BENEFITFOCUS® MarketPlace for Employers Product Upgrades <input type="checkbox"/> Advanced Branding <input type="checkbox"/> Guided Shopping <input type="checkbox"/> Platform Usage Stats <input type="checkbox"/> Single Sign-On (SAML 2.0) <input type="checkbox"/> Additional HCM Integration Suite deduction file integration <input type="checkbox"/> Initial Data Load (2 or more Data Sources) <input checked="" type="checkbox"/> Total Compensation App – Self Service <input type="checkbox"/> One Time Dependent Audit (Enrolled Employees with Dependents) <input type="checkbox"/> BENEFITFOCUS®ACA Management & Reporting <input type="checkbox"/> Optional Data Support Services <input type="checkbox"/> Paper Fulfillment Services (ACA Management & Reporting) <input type="checkbox"/> ACA Max (Standard Benefitfocus Data Integration) Benefitfocus MarketPlace Insights, Core & Advanced Analytics <input type="checkbox"/> Core Analytics <input type="checkbox"/> Advanced Analytics <input type="checkbox"/> Additional Data Sources (In Excess of Three) BENEFITFOCUS® Additional Services: <input type="checkbox"/> One Place Registration Services	<input type="checkbox"/> BENEFITFOCUS® Benefits Service Center <input type="checkbox"/> Employee Services <input type="checkbox"/> Employee Services Plus Administrative Services <input type="checkbox"/> Fulfillment Services <input type="checkbox"/> Standard Open Enrollment Confirmation Statements <input type="checkbox"/> Standard Ongoing New Hire Packets <input type="checkbox"/> Custom Fulfillment Services <input type="checkbox"/> Extended Hours BENEFITFOCUS® Professional Services <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"/> Media & Animation Production Services <input type="checkbox"/> Style A <input type="checkbox"/> Style B <input type="checkbox"/> Extend to 8 Minutes <input type="checkbox"/> Style C <input type="checkbox"/> Extend to 8 Minutes <input type="checkbox"/> Additional On-Screen Talent <input type="checkbox"/> Make-Up <input type="checkbox"/> Expediting Fee <input type="checkbox"/> Media & Animation Hosting Services

ACCOUNT ADMINISTRATION 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 <input type="checkbox"/> Form 5500 (HRA)	<input type="checkbox"/> Commuter <input type="checkbox"/> FSA <input type="checkbox"/> Form 5500 (FSA)
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Discovery Benefits, Inc.

<input type="checkbox"/> FSA	<input type="checkbox"/> HRA	<input type="checkbox"/> HSA	<input type="checkbox"/> Transportation	<input type="checkbox"/> COBRA (inbound and outbound transmission)	<input type="checkbox"/> Direct Billing/Retiree Billing
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BENEFITFOCUS®

<input type="checkbox"/> FSA	<input type="checkbox"/> HRA	<input type="checkbox"/> HSA	<input type="checkbox"/> COBRA	<input type="checkbox"/> Direct Billing	<input type="checkbox"/> Benefitfocus MarketPlace Billing & Payment	<input type="checkbox"/> Invoice Reconciliation
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III. Implementation Services:

A. Service:	One-Time Fee
Total Compensation App (<i>self service</i>)	\$5,000.00
TOTAL ONE-TIME FEES	\$5,000.00

B Implementation Services Terms and Conditions:

1. Implementation Services shall commence upon the Effective Date, and continue until Acceptance, as defined in Section III.B.2.
2. Acceptance procedures are as follows:
 - a. Each deliverable identified by Benefitfocus during implementation as Implementation Services deliverables will be Accepted upon the earlier of: (i) Client uses the applicable Software Services or deliverable(s) under essentially normal operating conditions, or (ii) Client fails to reject the applicable Software Services within ten (10) business days of Benefitfocus' notice that the applicable Implementation Services have been completed.
 - b. Should Client reject a deliverable, such rejection must be accompanied by an explanation of the reasons for the rejection, including specific references to those portions of any relevant schedule, deliverable, acceptance criteria, or product Documentation, which is the basis for the rejection, including identifying those deficiencies that must be corrected in order for the deliverable to be Accepted. Client shall not offer as the basis for any rejection, and Benefitfocus shall not be required to correct, (i) any minor imperfections or defects that do not materially impair the operation or utility of any deliverable or the Software Services; or (ii) lack of data transmission to any non-integrated carriers; or (iii) any delays caused by Client or Client's carriers or vendors.
3. Except as otherwise stated herein, the Implementation Services fees defined in Section III will be invoiced upon Client's execution of this Order Form. Benefitfocus will invoice Client for any increases in the number of units (e.g., Enrollment Eligible Employees, Non-Enrollment Eligible Employees, Transmission Projects, Vendor Data Interfaces, Single Sign-On links, etc.) that occurs during the Benefitfocus MarketPlace for Employers implementation upon Client's Acceptance.
- 4.
5. Client agrees to reimburse Benefitfocus for reasonable travel expenses approved in advance by Client for Professional Services for the implementation of the selected Software Services and understands that travel is not included within the fees presented herein and is an additional charge, which shall be invoiced at cost to the Client.

IV. Ongoing Software Services:

Services Description	Invoice Frequency	Rate	Minimum Quantity	Minimum Fee	Billing Terms
Total Comp – Self Service (Per Enrollment Eligible Employee (Full))	Annual	\$3.60	1	\$6,120.00	See Order Form, Section IV.A.2

A. Ongoing Software Services Terms and Conditions

1. At the End of the Initial Subscription 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.
2. **Ancillary Benefitfocus MarketPlace for Employers Add-On Software Services:**
 - a. Commencement of the Ancillary Benefitfocus MarketPlace for Employers Add-On Software Services invoicing shall begin upon: (i) the month in which the respective Software Services are available for use by Client (or any Authorized Users), or (ii) provided that the delay is not caused solely by Benefitfocus, the Target Go-Live Date. For each day of delay caused solely by Benefitfocus, invoicing shall be delayed by an equal number of days.
 - b. Upon Commencement of the respective Ancillary Benefitfocus MarketPlace for Employers Add-On Software Services, and annually 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 PEPY rate; or (ii) the actual number of Enrollment Eligible Employees (Full or Voluntary Only) and Non-Enrollment Eligible Employees loaded within the

Benefitfocus MarketPlace for Employers multiplied by the respective PEPY rate excluding the following category status values from invoicing; Charleston museum, IAAM, retiree, retiree diabetes, surviving dependents.

3. 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.
4. 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.
5. The availability of Services under this Order Form is conditioned upon Client also receiving the Benefitfocus MarketPlace for Employers Software Services. In the event Client's contract for the *Benefitfocus MarketPlace for Employers Software Services* terminates, the Services hereunder shall also terminate.

This Order Form is accepted and agreed to by:

BENEFITFOCUS.COM, INC.

CITY OF CHARLESTON

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____

This Appendix A defines a high-level overview of the Professional Services to implement the Software Service specified in the Order Form between Client and Benefitfocus.com, Inc. Detail regarding specific tasks, resources, and deliverables are defined within the project plan created as part of project coordination and discovery.

I. Total Compensation App Professional Services:

A. Project coordination and discovery:

1. Conduct pre-implementation coordination and scheduling
2. Hold a discovery kick-off call to initiate implementation project, including providing Client with templates for gathering medical plan attribute and rule information

B. Configuration of the Total Compensation App within online enrollment to incorporate the following deliverables:

1. Data supplied through *Benefitfocus* Marketplace, and additional data source file
2. Electronic on-screen presentation
3. PDF mockup of print version
4. HTML member self-print via a widget
5. Total Compensation template
6. Logos and fonts, supplied by Client
7. Logo presentation by page
8. Editorial content is text and provided by Client subject to size and placement limitations
9. Suitable for mailing in standard window envelope
10. Space for a mailing tracking code
11. One design session with Client, two creative editorial reviews via web conference, graphics placement, text changes, and widget placement

C. Dependencies:

1. Client to provide editorial content, graphics in a standard Vector file format
2. Sign off on final and QA of mockup of production version
3. No more than two data feeds, irrespective of number of data sources. *Benefitfocus* Marketplace can count as one + one more provided by Client or Client may independently provide the two data feeds.
4. One (1) additional Data File
5. One (1) Employee Segment
6. Client to provide/authorize file sources. *Benefitfocus* Marketplace can count as one, or Client may aggregate into one.
7. Data files structured by Benefitfocus designated format and primary key
8. Client will validate, and is responsible for, all data

This Appendix B 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 Benefitfocus Marketplace Functionality:

A. Self Service Total Compensation App:

1. Self Service Total Compensation tool, which includes the ability for HR Administrators to upload data in a variety of formats including Excel and CSV and customize the Total Compensation statements with images and messaging

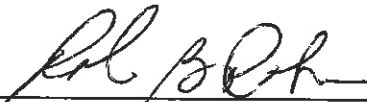
Score-Sheet

Workers' Compensation TPA RFP

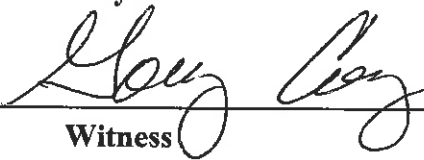
Solicitation #19-P028R

June 19, 2019

Firm	Scores of Scorers				Total Score
Brentwood Services	72	82	74	83	311
CorVel Corp.	64	87	83	67	301
Planned Admin., Inc.	86	81	85	77	329
PMA Management Corp.	92	93	93	93	371
Specialized Control Admin.	58	66	44	53	221


Buyer

6/19/19
Date


Witness

6/19/19
Date

**AGREEMENT FOR THIRD PARTY
CLAIM ADMINISTRATIVE SERVICES**

THIS IS AN AGREEMENT for third party claim administrative services (“**TPA services**”) made as of the 10th day of September, 2019, by and between PMA Management Corp. (“**PMA**”), a corporation duly incorporated under the laws of the Commonwealth of Pennsylvania, whose principal offices are located at 380 Sentry Parkway, Blue Bell, PA 19422 and The City of Charleston (“**Client**”), a political subdivision of the State of South Carolina.

RECITALS

CLIENT is authorized by the State of South Carolina to self-insure its workers’ compensation program;

PMA, a duly authorized provider of third party administrator (“**TPA**”) services in the State of South Carolina, hereby agrees to provide Client TPA and other services which are more fully described herein; and

CLIENT, having selected PMA to provide TPA and other services, desires to enter into an agreement with PMA on the terms and conditions set forth herein.

ACCORDINGLY, in consideration of the foregoing and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. DEFINITIONS

- a) “**ALAE**” shall mean any cost or expense incurred by PMA in connection with the administration, investigation, adjustment or defense of claims on behalf of Client.
- b) “**Claim File**” shall mean the file, either electronic or paper, for any open or closed claim which is provided to PMA at the inception of this Agreement or created during this Agreement.
- c) “**Discretionary Authority Limit**” shall mean the maximum amount PMA is authorized to pay on Client’s behalf on any Qualified Claim without first obtaining prior approval from Client.
- d) “**Lost Time Claim**” shall mean any timely reported workers’ compensation claim where the injured employee will likely be entitled to medical benefits and has lost or may lose time from work or will submit or has submitted a claim for indemnity benefits. A claim shall become a Lost Time Claim when PMA initiates an investigation of any kind to resolve issues regarding compensability without regard to: (1) whether or not the injured employee has actually lost time from work or (2) whether the claim is ultimately accepted or denied. Lost Time Claim shall also include a claim previously classified as a Medical Only Claim which required PMA to perform additional claim handling services of any nature.
- e) “**Medical Manager**” shall mean a PMA nurse who provides either on-site or telephonic case management services in connection with workers’ compensation claims.

- f) **“Medical Only Claim”** shall mean any timely reported workers’ compensation claim involving an injured employee who is or may be entitled to medical benefits but is not likely to lose time from work or submit a claim for indemnity benefits.
- g) **“Qualified Claim”** shall mean any Lost Time Claim, Medical Only Claim, or Record Only Claim occurring within the term of this Agreement.
- h) **“Record Only Claim”** shall mean any timely reported workers’ compensation injury or accident specifically designated by Client to be Record Only, and not otherwise classified by PMA as a Lost Time Claim or Medical Only Claim.

2. TERM

This Agreement is effective beginning October 27, 2019 (**“Effective Date”**) for a term of one year until October 26, 2020; thereafter this Agreement shall automatically renew for four successive one year terms until October 26, 2024. PMA will provide notice of any changes to the fees and charges set forth in this Agreement prior to the expiration of any term. If Client wishes to terminate this Agreement as a result of such price changes, it may, within 30 days of receipt of notice of such change, terminate this Agreement by providing 60 days’ notice to PMA. The current fee structure will remain in effect during the 60 day period until agreement is either terminated or renewed. Pricing for the first renewal year shall be the same as the initial term year of this Agreement. Thereafter, each renewal year shall be subject to the maximum of a three percent increase over the rates in effect for the immediately preceding year.

3. TPA SERVICES

- a) PMA shall provide customary and appropriate workers’ compensation claim handling services for all Qualified Claims. Specifically, about:
 - i. Lost Time Claims - PMA will provide the services required to make a determination regarding compensability, pay the appropriate level of indemnity benefits and medical bills and expenses as provided in this Agreement, and under appropriate circumstances, attempt to resolve the claim.
 - ii. Medical Only Claims - PMA services will consist of the payment of medical bills and expenses as provided in this Agreement.
 - iii. Record Only Claims - PMA services will consist only of making a record of the injury or accident.
- b) PMA shall provide claim handling services for Qualified Claims from the date of first report of injury or first notice of claim for the term of this Agreement.
- c) PMA shall file all required forms in the adjustment of Qualified Claims pursuant to the applicable workers’ compensation statutory and regulatory scheme.
- d) PMA agrees to review and seek approval from Client with respect to a recommended course of action regarding a Qualified Claim valued in excess of the Discretionary Authority Limit.

4. EXCESS REPORTING SERVICES

- a) PMA will report to Client's excess insurance carrier or carriers ("Carrier(s)") all Qualified Claims serviced by PMA which meet Client's excess insurance reporting requirements, subject to the following requirements:**
 - i. Client shall promptly provide PMA with copies of all applicable excess policies and contact information, as well as amended or modified policies, endorsements, and any excess claim reporting thresholds or standards agreed by the Client and Carrier(s).**
 - ii. Client shall direct Carrier(s) to promptly provide PMA with copies of all claim notice confirmations, claim reports, and any similar reports provided by Carrier(s) to Client.**
 - iii. Client shall promptly provide claim data for conversion to PMA's computer system for purposes of determining historical loss information.**
 - iv. Client shall instruct its attorneys to advise PMA when in the attorney's professional opinion one of Client's claims meets the reporting thresholds or standards.**
- b) PMA should provide Client with 60 day notice with Client's failure to meet the requirements set forth above, and if Client's failure to meet the requirement is due to bad faith PMA is relieved of its obligation to report excess claims to Carrier(s). PMA shall not be obligated to report any claims not serviced by PMA. During the aforementioned 60 day period, and until Client cures its failure to meet the requirements set forth above, PMAMC shall not be responsible for any excess reporting requirements.**

5. MANAGED CARE SERVICES

- a) Client agrees to utilize the following PMA managed care services as follows:**
 - i. PMA's medical bill review and repricing services, which include but are not limited to:**
 - 1. reviewing medical documents for appropriateness, relatedness to the injury or accident, unbundling, and conformity to applicable fee schedule or usual and customary re-pricing; and**
 - 2. utilizing PMA's complex bill review process to review certain medical bills for possible additional savings.**
 - ii. PMA's managed care networks which include:**
 - 1. traditional networks (e.g. physicians and medical facilities);**
 - 2. specialty networks (e.g. providers of durable medical equipment, diagnostic testing, and physical therapy); and**
 - 3. out-of-network services from PMA and third party vendors.**
 - iii. PMA's pharmacy benefit management program (e.g. bill repricing, home-delivery, brand-to-generic conversion, customized formularies, narcotic management, and drug utilization review).**

- b) Upon request, PMA's Medical Case Managers will provide on-site and telephonic case management services (e.g. coordinating care and disability management). PMA may also retain third party vendors for the purpose of providing specific medical case management services.
- c) City may utilize separately contracted arrangements with its own managed care vendor for the provision of certain managed care services; in these instances PMA managed care fees as set forth in Section 13 of this Agreement shall not apply. City will notify PMA of such arrangements so that PMA can make proper payment when necessary, and PMA will not provide additional services to City as it relates to those services. For the avoidance of doubt, PMA will: (1) not apply any of its managed care savings to City's aforementioned separately contracted arrangements, and (2) pay on behalf of the City an amount as the City instructs.

6. RISK CONTROL SERVICES

- a) Upon request, PMA will provide the following services:
 - i. perform a risk management assessment;
 - ii. prepare a more detailed analysis of specific risk-related issues, or prepare custom risk control strategies and implementation plans;
 - iii. provide the following risk control services: industrial hygiene assessment, ergonomic risk assessment, and consultation services (e.g. strategic risk control plan facilitation, and employee communication initiatives, as well as management, supervisor and employee development programs and occupational health service programs);
 - iv. create and administer a specific risk control service project mutually agreed upon with Client.
- b) Any risk control services provided are solely to assist Client in reducing Client's exposure to risk of loss. Evaluations concern only such conditions and practices as may be evident at the time of PMA's visits. **THE SERVICES PERFORMED UNDER THIS AGREEMENT BY PMA SHALL NOT BE CONSTRUED AS APPROVAL BY PMA OF CLIENT'S OPERATIONS, PROCESSES, SERVICES, PRODUCT DESIGN OR PRODUCT FUNCTION. THE PARTIES AGREE THAT, WHILE PMA WILL PERFORM RISK CONTROL SERVICES WITHIN INDUSTRY STANDARDS, NO GUARANTEES OR OTHER SIMILAR ASSURANCES CAN BE MADE BY PMA THAT IT HAS DISCOVERED ALL OF CLIENT'S PAST, CURRENT, OR FUTURE RISKS OR HAZARDS. THE PARTIES FURTHER AGREE THAT BY PROVIDING THE SERVICES SPECIFIED HEREUNDER, PMA IS NOT MAKING ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS OF CLIENT'S PRODUCTS OR PROCESSES FOR A PARTICULAR PURPOSE, COMPLIANCE WITH ANY LAW OR REGULATION, OR ANY OTHER WARRANTY, AND ANY LIABILITY OF PMA, ITS AFFILIATES OR AGENTS, FOR DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, FROM ANY CAUSE WHATSOEVER, IS EXPRESSLY DISCLAIMED, EVEN IF PMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION OF THE AGREEMENT SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.**

7. **RISK MANAGEMENT INFORMATION SYSTEM (“RMIS”)**

a) PMA will provide the following RMIS services:

- i. upon request, a conversion of Client’s existing claims data into PMA’s claim system. A standard conversion shall be from one source and a customized conversion shall be from two or more sources;
- ii. access to PMA's RMIS for up to three users, provided Client agrees to the terms and conditions of the License Agreement when first accessing PMA’s RMIS;
- iii. standard reports available through PMA’s RMIS;
- iv. customized reporting reasonably acceptable to PMA, subject to additional terms, conditions and fees as may be agreed upon by the parties. PMA will provide a reasonable estimate of the costs of preparation of any such reports to Client in advance.

b) PMA warrants PMA’s RMIS against malfunctions, errors, or loss of data which are due solely to errors on its part. If Client notifies PMA in writing and furnishes adequate documentation of any such malfunction, error or loss of data, then:

- i. in the event of a malfunction, error or loss of data, upon notice from Client within 20 days of the event, PMA will recreate the reports designated by Client without an additional fee, using data as of the recreation date.
- ii. the maximum and only liability of PMA for such malfunction, error or loss of data shall be its obligation to recreate reports or regenerate data as described above.

c) **THE WARRANTIES STATED IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL PMA BE LIABLE FOR ANY LOSS OR DAMAGE TO REVENUES, PROFITS, OR GOODWILL OR OTHER DIRECT, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND RESULTING FROM ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS SECTION, INCLUDING WITHOUT LIMITATION ANY INTERRUPTION OF BUSINESS, EVEN IF PMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THIS SECTION OF THE AGREEMENT SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.**

d) Obligations of Client regarding use of PMA’s RMIS:

- i. Client shall adhere to state and federal law with regard to protecting the privacy of any claimant whose information may appear in PMA’s RMIS. Client agrees to use all available security features and to notify PMA promptly of all potential and actual breaches of the system.

- ii. Client agrees that no information in PMA's RMIS will be used as a pretext for retaliatory or other illegal or unfair discriminatory employment practices in violation of any federal or state statute or regulation.
- e) General Provisions regarding PMA'S RMIS:
 - i. Client agrees to limit access to PMA's RMIS to those persons who perform the essential functions of claim and risk management, including protecting security access passwords and communications, except that this provision is not intended to limit Client from generating and using reports and statistics for legitimate business purposes.
 - ii. Unless otherwise stated, Client's access to PMA's RMIS will end upon termination of the Agreement.

8. LEGAL SERVICES

- a) In the event a Qualified Claim managed by PMA pursuant to this Agreement: (x) enters into litigation; or (y) is scheduled for a workers' compensation hearing; or (z) involves a potential third-party (subrogation) claim (collectively, (x), (y) and (z), "**Disputed Claim**"), PMA will:
 - i. make recommendations to Client regarding legal matters;
 - ii. coordinate with Client's selected legal counsel to represent Client in and regarding such legal matters, and assist Client in the selection of expert witnesses and vendors;
 - iii. pursue all appropriate subrogation/contribution claims as directed by Client.
- b) If requested by Client, PMA will manage Disputed Claims in accordance with PMA's Defense Counsel Guidelines.
- c) PMA will make settlement recommendations to Client, but the final decision regarding the disposition of any Disputed Claim will be made solely by Client.
- d) Client shall pay PMA a fee equal to 10% of the amount of any subrogation recovery.

9. SECTION 111 REPORTING

- a) Client understands and acknowledges that it is a Responsible Reporting Entity ("**RRE**") as defined by the Centers for Medicare and Medicaid Services ("**CMS**"), and is responsible for the reporting requirements as set forth in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007.
- b) Client authorizes PMA to undertake Client's Section 111 reporting requirements as Client's Account Manager/Reporting Agent as it relates to Client's Qualified Claims. Client further agrees to fully cooperate with PMA, including the execution of any documents necessary for such authorization.
 - i. PMA shall not provide any Section 111 reporting services for Client's Record Only Claims.

- ii. PMA shall not undertake Section 111 reporting activities for Client's claims which were converted from Client's prior TPA to PMA but were never serviced by PMA.
- c) PMA shall charge and Client shall pay a fee of \$8.00 per claim for any claim PMA needs to query to determine the injured worker's Medicare status.
- d) Client acknowledges and agrees to provide PMA with complete, accurate, and timely data for Section 111 reporting purposes.
- e) Upon receipt of complete, accurate claim data, PMA shall commence reporting of Client's data to CMS, and shall continue for as long as PMA provides claims handling services for Client's Qualified Claims.
- f) PMA shall have no liability for any failure of (i) Client to register as a RRE; (ii) Client to execute any documents necessary to authorize PMA as its Account Manager/Reporting Agent; or (iii) Client or its prior TPA to report Client's claims when they were first required to do so.

10. FUNDING of CLAIMS and EXPENSES

PMA will establish a non-interest bearing checking account in PMA's name ("**Payment Account**") with PMA's bank, which is to be funded by Client but which PMA will administer for the purposes of paying Qualified Claims and ALAE, in accordance with the procedures set forth in this Section. PMA will provide Client with a monthly schedule ("**Payment Register**") outlining all claim payments, ALAE, and correction items funded by PMA and will contain the name of the payee, date of payment, amount of payment, and claim number for all transactions occurring during the prior month.

- a) PMA will automatically withdraw funds from Client's account at Client's bank through the Automated Clearing House System ("**ACH Debit**") for deposit to the Payment Account. ACH Debit activities will occur on a weekly basis. Client acknowledges that it has signed an Authorization to Access Account Form prior to the inception of PMA's services. The Payment Account will initially be funded by Client in the amount of **\$108,000** (equal to two weeks estimated claims payments and ALAE) which amount may be revised at PMA's discretion at any time based upon actual claims and expense payment history. If at any time the Payment Account is depleted by 75% or more, PMA will automatically withdraw funds sufficient to replenish the Payment Account with appropriate notification to Client.
- b) Should Client fail at any time to maintain the required funding after receiving notification from PMA, PMA will stop providing services, including ceasing to pay claims and expenses, until such funding has been restored and any related PMA bank charges, fees, or penalties have been paid by Client.
- c) PMA is not obligated to pay any claims or expenses on behalf of Client unless the required funds are made available by Client to PMA to do so. Should PMA advance funding on the part of Client, then Client shall immediately reimburse PMA or PMA will stop providing services, including ceasing to pay claims and expenses, until full reimbursement has been received and any related PMA bank charges, fees, or penalties have been paid by Client.
- d) This Section of the Agreement shall survive the termination of the Agreement.

11. PAYMENT of CLAIM HANDLING SERVICE FEES

- a) For claim handling services to be rendered under this Agreement, Client agrees to pay PMA an annual fee in the amount of \$81,950.

The annual fee shall be paid in four equal installments. Client further agrees to pay the initial installment at the inception of this Agreement and subsequent installments quarterly thereafter. If during the term of this Agreement any individual occurrence results in more than 10 claimants as determined by PMA, then the following additional claim handling fees above and beyond the annual fee shall apply, commencing with the 11th claim and every claim thereafter for that individual occurrence:

- i. \$895 for each Lost Time Claim; and
 - ii. \$150 for each Medical Only Claim.
- b) PMA will bill Client for claim handling services to be rendered on a quarterly basis, along with any other fees (hereinafter identified) which shall be paid in full at inception of this Agreement. Client will pay such bills within 30 days after receipt. If bills are not paid within 30 days after receipt, PMA reserves the right to charge Client interest at an annual rate of 12% on all overdue payments, and to stop providing services, including ceasing to pay claims and expenses, until such bills and interest have been paid in full.

12. MANAGED CARE FEES

- a) For managed care cost containment services, Client shall pay a fee equal to \$8.50 per bill plus 29% of the savings over and above fee schedule and/or usual and customary charges resulting from use of PMA's network repricing services. Fees for network repricing services shall not exceed \$20,000 per bill.
- b) Upon request, PMA shall provide Client use of medical case management services, which shall be billed to Client at a rate of \$98.00 per hour.

13. RISK CONTROL SERVICE FEES

- a) During each year of this Agreement, PMA shall provide Client with up to 40 hours of non-refundable, non-transferrable risk control hours at no additional cost, so long as Client remains current in all payment obligations.
- b) Except as set forth in subpart (c) below, upon Client's request, PMA shall provide additional risk control services at a rate of \$135.00 per hour.
- c) Upon Client's request PMA shall provide industrial hygiene services at a rate of \$140 per hour, plus expenses.
- d) Upon Client's request, PMA shall provide pricing for project activities.

14. AUDIT FEE; DATA EXPORT FEE

- a) Client shall pay a fee of \$8,000 for each audit request.
- b) At Client's request, PMA shall provide monthly data export services at a rate of \$100 per month.

15. RISK MANAGEMENT INFORMATION SYSTEM FEE

Client shall pay PMA an annual fee of \$500 per user for access to PMA's RMIS for each user beginning with the fourth user. Client shall pay a fee in the amount of \$95 per hour for custom reports prepared by PMA.

16. CONFIDENTIALITY

- a) The parties acknowledge and agree that information emanating from either party's business in any form may be confidential and proprietary in nature. Each party will use its reasonable best efforts during and after the termination of this Agreement to preclude the duplication, use or disclosure of any such confidential and proprietary information to any third party, unless such duplication or disclosure is specifically authorized under this Agreement or otherwise by the party claiming ownership. In addition, the parties agree that information contained in a Claim File or PMA's RMIS or otherwise provided in the context of this relationship shall be considered confidential and proprietary, and may constitute privileged and/or attorney work product protected from discovery by law and/or rules of court. Therefore, neither party will release any such information unless:
 - i. compelled by an order of a court of competent jurisdiction;
 - ii. mandated by an insurance code, claim practices act, workers' compensation law, or other applicable law or regulation to provide information to the claimant or other person; or
 - iii. mandated by applicable court discovery rules.
 - iv. or otherwise required by law.
- b) If there is an obligation to release part but not all of the information, the part deemed not responsive will be withheld, but nothing in this Agreement is intended to abrogate the duty of either party to comply in good faith with such discovery requests.
- c) Each party agrees that the information contained within PMA's RMIS must be treated in a confidential manner by all users who may gain authorized access to PMA's RMIS.
- d) This Section of the Agreement shall survive the termination of the Agreement.

17. NATURE of RELATIONSHIP

- a) PMA agrees to perform the services described in this Agreement as an independent contractor and not as an agent or employee of Client. Client retains no control or direction over PMA, its employees or agents, or over the detail, manner or methods of the performance of the services described herein.

- b) PMA shall be entitled to retain third party vendors to provide any or all services herein when deemed appropriate by PMA.

18. TERMINATION

- a) This Agreement may be terminated upon 90 days advance written notice by either party with or without cause.
- b) This Agreement may be terminated:
 - i. by mutual agreement of the parties;
 - ii. by PMA if Client is in default in payment of any fees or expenses due hereunder or fails to maintain the requisite claim funding levels as required herein and PMA has given Client prior written notice of such default 10 days prior to the date set for termination;
 - iii. by the non-defaulting party if the other party defaults (other than a monetary default) under any of the terms, covenants and conditions hereunder and the non-defaulting party has given the defaulting party prior written notice of such default 20 days prior to the date set for termination and the defaulting party has failed to cure such default prior to the termination date;
 - iv. by one party if the other party becomes insolvent or bankrupt, is placed into receivership, makes an assignment for the benefit of creditors, or is levied upon or sold by Sheriff's sale;
 - v. by PMA or Client if PMA fails to obtain any required state or federal licensing for providing services hereunder; or
 - vi. by PMA or Client if any state regulatory entity fails to approve or subsequently disapproves or revokes the self-insured status of Client.
- c) This Agreement shall be deemed terminated upon its normal expiration.
- d) Upon termination of this Agreement, PMA will provide a final accounting of any amounts due either party. Client shall be responsible for payment of all fees incurred by PMA up to and including the date of termination. Upon final closing of the account, PMA shall return the Claim Files to Client in electronic form.
- e) Client and PMA acknowledge that certain approved indemnity, medical and expense payments may still be in process of payment upon the date of termination. Therefore Client agrees that Client will remain responsible for payment of any and all indemnity, medical and expense payments which may be processed by PMA for a Qualified Claim, which shall include, at a minimum, the maintenance of a claim funding mechanism for at least 45 days after the Agreement terminates. In addition, PMA shall return to Client any outstanding checks remaining unpaid after termination. PMA shall not be responsible for Client's escheat obligations with regard to issued but unrepresented checks either before or after the termination of this Agreement.

- f) PMA may utilize the Payment Account for any outstanding amounts owed by Client to PMA prior to returning unallocated funding to Client.
- g) This Section of the Agreement shall survive the termination of this Agreement. Nothing in this Section of the Agreement shall limit any other remedy that may be available to PMA.

19. INDEMNIFICATION, HOLD HARMLESS, and LIMITATION OF LIABILITY

- a) a) City shall keep in force at its expense, as long as this Agreement remains in effect, public liability insurance (provided by the South Carolina Insurance Reserve Fund or other insurance provider chosen by the City) with a limit not to exceed the amounts listed below for damages as the result of any one occurrence including damages for care and loss of services, because of personal injury sustained by one or more persons, because of all property damage sustained by one or more persons or organizations, or by any combination of personal injury or property damage sustained by one or more persons or organizations:
 - i. A limit of Three Hundred Thousand and No/100 (\$300,000.00) Dollars per person arising because of loss from a single occurrence on account of bodily injuries, because of property damage sustained, or by any combination of personal injury or property damage; and
 - ii. A total sum not to exceed Six Hundred Thousand (\$600,000.00) Dollars as the result of any one occurrence, accident or disaster.
- b) b) To the fullest extent permitted by law, PMA shall indemnify, defend and hold harmless Client, its affiliates, officers, directors, employees, and agents, from and against all claims, losses, damages, costs, liability or expenses, including attorneys' fees, caused by or resulting from claims from third parties alleging negligence or willful misconduct of PMA, its officers, directors, employees or agents. However the parties agree that PMA, its directors, officers, agents or employees, will not be liable to Client or any third party for claims arising from PMA's performance under this Agreement in those cases where PMA acted at the request of or with the consent of Client.
- c) Client agrees that it will not hold PMA liable for, or reduce the compensation of PMA with respect to, any failure of PMA to deliver any services resulting from (i) any failure to cooperate on the part of Client or the prior administrator, or (ii) any files for Takeover Claims which have not been properly maintained or are not delivered to PMA in good order.
- d) Promptly after the receipt by the City seeking indemnification under this section ("Indemnatee") of notice of the commencement of any action or the assertion of any claim against such Indemnatee by a third party, such Indemnatee shall give such indemnifying party (PMA) written notice thereof. If the indemnifying party fails to defend or, after undertaking such defense, fails to prosecute or withdraws from such defense, the Indemnatee shall have the right to undertake the defense and settlement thereof at the indemnifying party's expense. If the indemnifying party is defending such action or claim, the Indemnatee may retain separate counsel at its sole cost and expense and may participate in the defense of such action or claim. An indemnifying party may only settle an action or claim with the consent of the Indemnatee, which consent shall not be unreasonably withheld or delayed. If the Indemnatee does not consent to a settlement proposed by the indemnifying party that includes a full release of Indemnatee from all claims at issue, the Indemnatee shall be responsible for any

settlement, award, judgment or damages incurred above the settlement amount proposed by the indemnifying party, as well as all costs and expenses, including attorneys' fees, incurred in the defense of the claims from the date of the proposal.

- e) Neither party shall be liable to the other party for punitive or consequential damages.
- f) Should the parties be adversaries in litigation pursuant to this Agreement, Client agrees PMA's total liability to Client under this Agreement (whether in contract, tort, or otherwise) shall not exceed \$500,000.
- g) This Section of the Agreement shall survive the termination of the Agreement.

20. NOTICES

All notices required to be given by one party to the other under this Agreement will be in writing and will be sent by first class US mail, postage prepaid, or by nationally recognized overnight carrier and will be addressed as set forth below or to such other address as may be designated in writing by either party in accordance with the provisions of this Agreement and will be effective upon receipt.

For Client: Mayor of Charleston
80 Broad Street
Charleston, SC 29401

Corporation Counsel
City of Charleston
50 Broad Street
Charleston, SC 29401

Chief Financial Officer
City of Charleston
116 Meeting Street
Charleston, SC 29401

For PMA: President
PMA Management Corp.
380 Sentry Parkway
Blue Bell, PA 19422

With a copy to: General Counsel
PMA Management Corp.
380 Sentry Parkway
Blue Bell, PA 19422

21. NON SOLICITATION of OTHER'S EMPLOYEES

Each party to this Agreement agrees not to directly solicit for employment, either as an employee or an independent contractor, employees of the other party during the term of this Agreement or for a period of one year following its termination. The parties acknowledge the difficulty in determining a specific damage amount for breach of this section, therefore, as liquidated damages and not as a

penalty, if either party breaches the terms of this section, the breaching party shall pay the other party an amount equal to one year's base salary of each employee hired. This section of the Agreement shall survive the termination of the Agreement.

22. ASSIGNMENT

This Agreement will be binding upon the parties, their successors and assigns.

23. COOPERATION

- a) Client and its agents, representatives and employees will promptly report to PMA all notices of injuries, losses or claims for which Client may be liable under its self-insurance program, and to provide all necessary documents and materials to PMA, including but not limited to excess policies, which are necessary to provide the services hereunder.
- b) Each party and its agents will cooperate fully with the other party in connection with its obligations hereunder and upon reasonable request, assist in the investigation, litigation, settlement and/or defense of a particular Qualified Claim. Upon prior notice from Client, all Claim Files will be open to Client's inspection at reasonable times, at the office of PMA. PMA may, at its own option within five business days of such request provide Client or Client's representative with limited access to PMA's RMIS for the purposes of reviewing Claim Files electronically.
- c) This Section of the Agreement shall survive the termination of the Agreement.

24. WARRANTIES and REPRESENTATIONS

- a) By affixing its authorized signature below, Client warrants that it has been duly authorized and/or otherwise possesses all requisite authority and may lawfully enter into this Agreement.
- b) By affixing its authorized signature below, PMA warrants that it has been duly authorized and/or otherwise possesses all requisite authority and may lawfully enter into this Agreement.

25. MODIFICATION

PMA may seek to modify fees if: (i) PMA's fees and charges were based upon inaccurate or erroneous data, or Client's business changes materially in the nature or volume of business or claims from what was originally contemplated at the inception of the Agreement; or (ii) during the term of this Agreement, legislative and/or regulatory changes materially impact or change the scope of PMA's services or responsibilities. If the parties are unable to reach an agreement with regard to the modification, then either party may terminate this Agreement with 60 days written notice to the other party, with the current fee structure remaining in effect. PMA will continue to provide services for the 60 day notice period, after which PMA will return all Claim Files to Client and submit a final billing to Client.

26. MISCELLANEOUS

- a) **Governing Law; Jury Trial Waiver.** This Agreement and all disputes relating in any way to this Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to its principles of conflicts of laws.

- b) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes all prior written or oral agreements, representations, warranties, negotiations, or understandings. The parties further represent and warrant that they have not relied on any representations, warranties or statements as an inducement to entering this Agreement other than what is expressly written herein.
- c) **No Waiver.** No delay or omission on the part of any party in exercising any right hereunder will operate as a waiver of such right or of any other right under this Agreement. A waiver on any one occasion will not be construed as a bar to or waiver of any right or remedy on any other occasion.
- d) **Force Majeure.** The obligations of either PMA or the Client under this Agreement will be suspended for the duration of any force majeure applicable to that party. The term “force majeure” means any cause not reasonably within the control of the party claiming suspension, including without limitation, an act of God, industrial disturbance, war, riot, weather related disaster, earthquake, and/or governmental action. Client’s obligation to fund its claims and expenses shall continue uninterrupted during this Agreement and shall not be subject to a force majeure event. The party claiming suspension pursuant to this section of the Agreement shall take all commercially reasonable steps to resume performance as soon as possible without incurring unreasonably excessive costs.
- e) **Severability.** The provisions of this Agreement are to be deemed severable, and the invalidity or unenforceability of any provision will, unless material and going to the essence of the Agreement as a whole, not affect or impair the remaining provisions which will continue in full force and effect.
- f) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which will constitute but one and the same Agreement.
- g) **Captions.** The captions and headings to the various Sections of this Agreement have been inserted for convenience of reference only, and shall not have the effect of amending or changing the express terms or provisions of this Agreement.
- h) **Ambiguities.** The parties agree that the terms and language of this Agreement are the result of detailed negotiations between the parties and, as a result, there shall be no presumption that any ambiguities in this Agreement shall be resolved against either party. Any controversy over the construction of this Agreement shall be decided in light of its business purposes, without regard to events of authorship or negotiation. In the event of any inconsistency or conflict between the terms or provisions of this Agreement and the terms or provisions of any other pre-existing or contemporaneous document or agreement as to the subject matter of this Agreement, the terms and provisions of this Agreement shall control and shall supersede the terms or provisions of such other document or agreement.
- i) **Calculation of Time.** All references herein to days shall be to calendar days, unless an express reference is made to business days. In the event the last day for compliance falls on a Saturday, Sunday, or Holiday, the period for compliance shall be deemed to include the following business day.
- j) **Amendment.** Except as otherwise set forth in this Agreement, this Agreement will not be amended except as mutually agreed in a writing signed by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the day and year first written above.

PMA MANAGEMENT CORP.

THE CITY OF CHARLESTON

BY: 

BY: _____

TITLE: President

TITLE: _____