

Third Party Administration Agreement

between

City of Milwaukee

and

Total Claims Solution

A Division of Claim Management Services, Inc.

THIRD PARTY ADMINISTRATION AGREEMENT

This Agreement is made between City of Milwaukee, 200 East Wells Street, Room 701, Milwaukee, Wisconsin, 53202, (hereinafter "Plan Sponsor") and Total Claims Solution, a division of Claim Management Services, Inc., P.O. Box 10888, Green Bay, Wisconsin, 54307-0888, (hereinafter "TPA").

Whereas the Plan Sponsor has established the group health plans listed on the "Schedule of Plans" (such plans hereinafter collectively referred to as "Plan") for the benefit of its employees and their dependents who are eligible to participate in and receive benefits under the Plan (the "Participants");

Whereas City of Milwaukee is the Employer, Named Fiduciary, Plan Administrator and Plan Sponsor for the Plan;

Whereas the Plan Sponsor desires the TPA to perform certain administrative activities of the Plan; and,

Whereas the TPA is willing to perform the duties specified below for the Plan.

Now therefore, in consideration of the mutual covenants and undertakings set forth below, the Plan Sponsor and the TPA agree as follows:

Section 1: Appointment of the Third Party Administrator

1.1 APPOINTMENT. The Plan Sponsor appoints the TPA as the third party administrator for the Plan and as its limited agent to perform certain specified activities enumerated below, but not as a fiduciary of the Plan or an employee of the Plan Sponsor. The Plan Sponsor shall have absolute authority with respect to the control, management, investment, disposition or utilization of the Plans' assets. The TPA shall not possess any discretion or authority over Plans' assets. The TPA accepts the appointment subject to the terms and conditions of this Agreement and agrees to administer the Plan in accordance with the provisions of the Plan's Master Plan Document. All other responsibilities of the Plan which are not delegated to the TPA by this Agreement are reserved to the Plan Sponsor. The TPA may assign its responsibilities under this Agreement to others to discharge its responsibilities for the Plan.

1.2 TERM. The term of this Agreement shall be for three years commencing on the effective date set forth below. The Agreement shall be automatically renewed thereafter for an additional three-year term on the anniversary of its effective date unless terminated as set forth below.

Section 2: **General Duties of the Third Party Administrator**

2.1 MASTER PLAN DOCUMENT. The TPA shall, at the request of the Plan Sponsor, prepare a draft of the Master Plan Document for the Plan in accordance with direction provided by the Plan Sponsor. The TPA will prepare such amendments to the Plan as the Plan Sponsor may request. The Plan Sponsor shall review the Master Plan Document for the Plan and any amendments prepared by the TPA with its own legal counsel to determine their adequacy and sufficiency prior to executing such documents. At no time during the term of this Agreement shall the TPA provide the services of legal counsel and at no time shall the Plan Sponsor interpret any services being provided by the TPA as legal services.

2.2 ADDITIONAL COPIES. The TPA shall, at the request of the Plan Sponsor, provide additional copies of the Master Plan Document to the Plan Sponsor. The Plan Sponsor shall reimburse the TPA for its costs to print copies of the Master Plan Document, as approved by the Plan Sponsor, in quantities specified by the Plan Sponsor. Requests for additional copies and special printing requests can be accommodated at the Plan Sponsor's expense.

2.3 IDENTIFICATION CARDS. The TPA shall provide the Plan Sponsor with identification cards for Participants to evidence participation in the Plan.

2.4 INSURANCE. The TPA shall:

2.4.1 Maintain a Fidelity Bond covering the TPA and its employees in accordance with the requirements of ERISA.

2.4.2. Maintain appropriate Commercial General Liability coverage in the amounts specified in the City of Milwaukee's Request for Proposals for Health Care Plans effective January 1, 2006;

2.4.3. Maintain appropriate Errors and Omissions coverage in the amounts specified in the City of Milwaukee's Request for Proposals for Health Care Plans effective January 1, 2006;

2.4.4. Maintain Workers' Compensation Insurance for its employees and provide to the City of Milwaukee a Certificate of Insurance as satisfactory proof evidencing that the TPA has obtained such coverage for all persons performing any work or services

under this Agreement as required by the Workers' Compensation Act of the State of Wisconsin and in the amounts specified in the City of Milwaukee's Request for Proposals for Health Care Plans effective January 1, 2006; and

2.4.5. Maintain coverage against theft or other misappropriation of funds by whatever means for the TPA, its directors, officers, partners, shareholders, employees or agents, as specified in the City of Milwaukee's Request for Proposals for Health Care Plans effective January 1, 2006.

2.5 COMPLIANCE INFORMATION. The TPA shall provide the Plan Sponsor with the following information upon request:

2.5.1. Cost and Participant census information for the completion of Form 5500 and any attached schedules.

2.5.2. Cost and Participant census information for determination of continuation rates as may be required by the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, as amended.

2.6 PERIODIC REPORTS. The TPA shall provide the Plan Sponsor with periodic reports regarding the administration of the Plan. The reports and the frequency of distribution are identified in the attachment to this Agreement.

2.7 COOPERATION. The TPA and Plan Sponsor shall each provide the other with cooperation and assistance reasonably necessary to defend any litigation or claim which is filed against the Plan. Such cooperation and assistance shall include providing access to employees and to Plan information and Plan documents. The TPA shall also assist the Plan Sponsor in complying with any public record requests pursuant to Section 19.35 of the Wisconsin Statutes.

Section 3: **Claims**

3.1 CLAIMS PROCESSING. The TPA agrees to receive and process claims for payment by the Plan in accordance with the provisions of the Plan, the administrative procedures of the TPA, or as directed by the Plan Sponsor provided such direction is given in writing.

3.1.1. Claim Appeal Services. The TPA agrees to make all initial claim appeal determinations under the Plan while the Plan remains in effect, subject to Sections 3.3 and 6 below. The TPA's duties and responsibilities for claim appeal determinations shall be limited to the review of denied claims in accordance with the terms of the Plan and applicable law. The TPA shall have sole and absolute discretion in performing all

functions relative to the performance of these duties and responsibilities, including without limitation the following:

- (a) making determinations on appealed claims and notifying the participant in writing of the results and the basis for the results; and
- (b) maintaining a formal procedure for reviewing appeals of denied claims as required by applicable state and federal law and regulations.

The TPA shall only be required to review denied claims which the TPA has initially processed under the Plan. The Plan Sponsor shall furnish to the TPA such records and other information which are in the possession of the Plan Sponsor or under its control which are needed by the TPA to perform its responsibilities hereunder or to decide any request for review of a denied claim.

3.1.2. Use of Experts. The TPA shall have the right to engage experts such as, but not limited to, medical doctors and consultants whose assistance and advice is deemed necessary by the TPA in connection with the services provided under Section 3.1.1. The Plan Sponsor agrees to reimburse the TPA for the costs of such experts.

3.2 ELIGIBILITY. For hard copy submissions, the TPA shall determine the eligibility of the employees, dependents, and retirees to participate in the Plan in accordance with the terms of the Plan and subject to Section 5.2. For electronic submissions, the Plan Sponsor shall determine the eligibility of the employees, dependents, and retirees to participate in the Plan in accordance with the terms of the Plan and subject to Section 5.2. TPA shall accept from the Plan Sponsor Internet transmission of Plan Change Notices and Applications for Coverage. Internet transmissions shall be in a format as specified by the TPA. If the Plan Sponsor submits Plan Change Notices and Applications for Coverage to TPA by Internet transmission, Plan Sponsor shall maintain properly executed originals of all Change Notices and Applications for Coverage that may be necessary to satisfy any audit or proof requirements of Plan Sponsor's stop-loss carrier.

The Plan Sponsor shall be responsible for all claims adjudicated and paid prior to notification by Plan Sponsor to the TPA of a participant's ineligibility to participate in the Plan. When participant additions or terminations occur, a charge or credit may apply to the per employee per month fees payable, based on the effective date of the change. In no event will a credit be given for fees owing under this Agreement if the termination notification is received by the TPA more than three (3) months after the employee's actual term date, and in no event will the credit be greater than the per employee per month fee, multiplied by three (3).

3.3 RESERVATION OF AUTHORITY. The Plan Sponsor reserves the final discretionary authority to make its own determinations on eligibility under the Plan and to make determinations required in Sections 4.3.6; 4.3.10; and 4.3.11, regardless of the TPA's determination, based on the Plan Sponsor's own interpretation of the Plan and the facts. The Plan Sponsor shall make all final claim appeal determinations, as provided for in the Master Plan Document, and shall direct the TPA to deny or pay claims based upon such final determinations.

3.4 SUBROGATION. The TPA shall, in accordance with its policies and procedures, endeavor to recover for the Plan amounts paid for claims where a party other than the Plan Sponsor is or may be responsible for the circumstances giving rise to claims. The TPA shall have the authority on behalf of the Plan to settle and compromise any subrogation claims not the subject of pending litigation ("non-litigation" claims), provided however any reduction or waiver in the subrogation claim in an amount equal to or in excess of \$5,000 shall be submitted to the Plan Sponsor for approval by the Common Council. Any subrogation claim that reaches litigation shall be referred to the Plan Sponsor for retention of counsel. The TPA shall be allowed to execute documents as may be necessary to accomplish the settlement and compromise of such non-litigation claims and suits. Such authority shall include the right to waive future subrogation rights of the Plan as consideration of settlement amounts paid to the Plan.

3.5 FORMS AND APPLICATIONS. The TPA shall provide the Plan Sponsor with forms and applications as may be necessary for individuals to apply for coverage under the Plan and for Participants to make claims for benefits under the Plan. Such other forms provided by the TPA are for the convenience of the Plan Sponsor and the Plan Sponsor shall determine their adequacy and sufficiency for its own purposes.

3.6 PAYMENT RECOVERY. The TPA shall administer the Plan so that all recoveries from the coordination of benefits provisions of the Plan as well as recoveries for any payments made in error or from duplicative payments shall be returned to the Plan.

3.7 CONFIDENTIALITY. The Plan Sponsor and the TPA acknowledge that in the course of performing their respective duties, they may acquire knowledge of a personal nature including, but not limited to, Participant treatment records, billing information, or other personal information pertaining to Participants. The TPA and Plan Sponsor shall keep confidential the information described above to the extent necessary pursuant to law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Part 160-164) ("HIPAA Privacy Regulation" and/or "HIPAA Security Regulation"), however the TPA may use such data relating to the Plan for statistical or reporting purposes in a manner that will not disclose such confidential information or the identity of the Plan. Further,

TPA may disclose such information to stop-loss carriers for the purpose of securing stop-loss coverage with respect to the Plan for City of Milwaukee.

The TPA may also disclose otherwise confidential information when such disclosure is consistent with the purposes and objectives of the Plan and permitted by the HIPAA Privacy Regulation.

3.8. PAYMENT FOR PLAN COVERED SERVICES. Plan Sponsor is solely responsible for providing funds for payment for services covered by the Plan and rendered by Preferred Providers or any other provider under the Plan. Plan Sponsor agrees to provide payment for services provided by Preferred Providers at the Preferred Provider Rate. TPA does not represent that the Preferred Provider Rate is lower than would otherwise be available. The Preferred Provider Rate is subject to change based on the terms of the Preferred Provider contract negotiated by TPA. This Agreement does not give Plan Sponsor any rights with regard to negotiating the Preferred Provider Contract or Preferred Provider rates.

The Plan Sponsor shall be fully responsible for an agrees to reimburse TPA to the extent that TPA has made payment of claims asserted against TPA or its affiliates by a provider or any covered person for payment of Plan benefits. To the extent that a provider is paid pursuant to a capitation agreement with the TPA that provider cannot accept capitation from the Plan Sponsor, the Plan Sponsor agrees to pay any claims as though no capitation agreement existed with the provider e.g., the usual and customary fee).

For purposes of this section, "Preferred Provider" means a provider that has entered into an agreement with the TPA under which the provider has agreed to provide certain services to person covered by self-funded health or dental plans administered by TPA.

Section 4: **Managed Care**

4.1 UTILIZATION REVIEW PROCESS. The TPA shall review all requests from Participants for inpatient hospital confinement and as part of that review shall perform the following services:

4.1.1. Evaluate the medical necessity of the treatment program which is proposed for the hospital confinement in accordance with the Plan.

4.1.2. Approve admission for a specified period of time based on the TPA's evaluation of the medical necessity as provided in the Plan.

4.1.3. Advise the person initiating the request of the determination made and maintain records of all such determinations.

4.2 CONCURRENT REVIEW. The TPA shall, as it deems necessary and appropriate, review the medical treatment of a Participant during a hospital confinement for the purpose of verifying the continued medical necessity of the treatment and to adjust the time authorized for confinement, if necessary.

4.3 ADDITIONAL SERVICES. To the extent deemed necessary, the TPA shall provide the following service in connection with utilization review or concurrent review:

4.3.1. Discharge Planning.

4.3.2. Review of Second Medical Opinions. (when directed by Plan Sponsor in writing)

4.3.3. Medical Case Management.

4.3.4. Retrospective Review.

4.3.5. Hospital Bill Audit.

4.3.6. Hospital Bill Incentive Audit Program. (when directed by Plan Sponsor in writing)

4.3.7. Psychiatric and Substance Abuse Review.

4.3.8. Utilization Analysis Reports.

4.3.9. DRG Review.

4.3.10. "High Risk Maternity" Prenatal Postpartum Service. (when directed by the Plan Sponsor in writing)

4.3.11. Outpatient Precertification (when directed by Plan Sponsor in writing)

4.4 CRITERIA. In performing its duties pursuant to this Section 4, the TPA may utilize and is authorized to rely upon a nationally recognized medical review criteria and the Length of Stay by Diagnosis and Operation: United States published by Solucient, L.L.C. or other similar recognized medical standards.

4.5 FORMS AND APPLICATIONS. The TPA shall provide the Plan Sponsor with forms and applications to enable Participants to comply with the requirements of Utilization Review and Concurrent Review.

4.6 SCOPE OF REVIEW. The determinations made by the TPA pursuant to this Section 4 are intended solely for the purpose of determining benefits under the Plan and may not be construed or relied upon as advice, recommendations, or the quality of professional health services rendered to the Plan's Participants.

Section 5: **Responsibilities of the Plan Sponsor**

5.1 FUNDING. TPA will establish a claim payment bank account with the capability to accept Automatic Clearinghouse (ACH) transfers for the reimbursement of those claims paid on both in-state and out-of-state claims. Plan Sponsor will make ACH transfer to reimburse both the TPA's In-state and Out-of-State Accounts within the timeframe noted below.

On the day of the check cycle the total amount required for the In-state ACH transfer will be e-mailed or faxed to the Plan Sponsor. The Finance Department will also forward the In-state Check Register Report and ACH Register Report to the designated Plan Sponsor contact by mail. It is the Plan Sponsor's responsibility to ensure this information is retrieved in a timely fashion to accomplish the ACH transfer within the specified period of time.

TPA's In-state Account: A check register will be sent weekly indicating the checks that have been issued and the dollar amount. This account will be used to fund claims incurred within the State of Wisconsin.

ACH Register: An accounting of ACH transactions will be sent weekly detailing paid claim dollars, access fees (% savings), admin fees, and standard administrative fees charged by the TPA for transactions on a per claim basis as specified on the Schedule of Fees.

Wire transfer or ACH transfer can be used to transfer funds to the TPA account. The Plan Sponsor must also reimburse the TPA via check, ACH or wire transfer the amount of the In-state check register no later than forty-eight hours following receipt of the ACH amount from the TPA.

5.2 PARTICIPANT INFORMATION. The Plan Sponsor shall initially and throughout the term of this Agreement identify to the TPA all individuals eligible to receive benefits under the Plan and all individuals who cease to be eligible to receive benefits under the Plan. The TPA is authorized to rely on the Plan Sponsor's compliance with this Section 5.2 in order to administer

the Plan in accordance with its terms. It shall be the Plan Sponsor's responsibility to maintain original documentation of Participant's eligibility for participation in the Plan, such as applications for coverage and changes of coverage including such documentation required by any applicable stop-loss contract.

5.3 COMPLIANCE WITH LAWS. The Plan Sponsor shall be responsible for compliance with the requirements of all applicable federal, state and municipal laws and regulations affecting the Plan, including filing and disclosure requirements such as those which relate to the Form 5500, and Summary Plan Descriptions, and any of the Plan amendments. The Plan Sponsor shall reimburse the TPA for all taxes, assessments, and fees, including amounts sought or collected for underpayments of claims of Participants covered by Medicare, that are imposed by any judicial, administrative, or governmental entity in connection with the Plans which the TPA is required to pay that are not properly attributable to the TPA. The Plan Sponsor further acknowledges that it is responsible for obtaining its own legal and/or tax advice and is aware that the TPA cannot provide legal or tax assistance on behalf of the Plan.

5.4 COMPENSATION. The Plan Sponsor shall pay to the TPA the amounts specified in the Schedule of Fees which is attached to and made a part of this Agreement promptly upon receipt of invoice.

The Plan Sponsor shall also pay to the TPA twenty-five percent (25%) of the amount of each subrogation recovery made for the Plan during the term of this Agreement not to exceed \$10,000 for any individual subrogation non-litigation claim. Subrogation payments to the TPA shall be made in the form of credits against claims payable under section 5.1, within 30 days of the TPA's receipt of a subrogation recovery.

5.5 HOLD HARMLESS. The TPA agrees to indemnify and hold harmless the Plan Sponsor against any and all claims, lawsuits, settlements, judgments, costs, penalties and expenses, including attorneys' fees resulting from or arising out of the negligent, fraudulent or criminal acts, bad faith of the TPA or its employees acting alone or in collusion with others in the administration of the Plan and this Agreement. For purposes of this provision, "bad faith" shall mean actions taken by Administrator, its employees or agents, without a reasonable basis and which are intentional or reckless disregard of the provisions of the Agreement and/or the terms of the Plan and shall include, but not be limited to, cases in which the TPA improperly denied a claim. The Plan Sponsor agrees to indemnify and hold harmless the TPA against all other claims, lawsuits, settlements, judgments, costs, penalties, expenses and attorney fees, provided they result from Administrator's acts or omissions while acting within the scope of its agency under this Agreement.

The TPA shall have no responsibility under this Section 5.5 or this Agreement to pay the cost of any benefit claim under or pursuant to any Plan. The payment of such amounts shall remain the sole responsibility of the Plan Sponsor. The Plan Sponsor shall pay to the TPA, amounts for charges for claims and associated expenses incurred prior to termination of either this Agreement, or the Plan, but which require payment pursuant to BlueCard rules subsequent to any such termination. The obligations of this Section shall survive the termination or expiration of this Agreement.

The Plan Sponsor shall have no responsibility under this Section 5.5 to hold harmless or indemnify TPA if any such suit, claim, fine, attorneys' fees, penalty, judgment, damages or award is caused by the gross negligence or willful misconduct of the TPA, its officers, directors, or employees.

5.6 COOPERATION. The Plan Sponsor agrees to provide the TPA with its full cooperation and assistance in accomplishing the purposes of the Plan and this Agreement.

Section 6: Termination, Notices, Third Party Rights, Waiver, Records, Invalidity and Effective Date

6.1 TERMINATION. This Agreement may be terminated as follows:

6.1.1. Either the Plan Sponsor or the TPA may terminate this Agreement by providing the other with written notice of termination at least 30 days prior to the expiration of the initial term or its subsequent anniversary dates.

6.1.2. Either the Plan Sponsor or the TPA may terminate this Agreement in the event the other breaches a provision of this Agreement, provided that, the party alleged to have committed the breach has been provided with a 60 day written notice, specifying the circumstances constituting the breach, and further, that the breach has not been corrected within the notice period.

6.1.3. The TPA may terminate this Agreement in the event that the Plan Sponsor breaches any of its obligations of Section 5, provided that, the TPA has provided 10 days written notice of termination to the Plan Sponsor and the Plan Sponsor has failed to cure such breach within the notice period.

6.1.4. Either party may terminate this Agreement by giving the other party written notice if the party to whom such notice is given has breached the same provision of this Agreement twice and is or has been provided with written notice of each breach and the breaches have not been corrected within 31 days of such notice.

6.1.5. Either the Plan Sponsor or the TPA may terminate this Agreement immediately in the event the other shall be adjudged bankrupt, become insolvent, have a receiver of its assets or property appointed, make a general assignment for the benefit of creditors, or institute or cause to be instituted any procedure for reorganization or bankruptcy.

6.1.6. The Agreement may terminate in the manner provided in Section 5.4 above.

Upon termination of this Agreement, the TPA shall have no further obligation whatsoever with respect to the Plan other than to provide the Plan Sponsor with a final accounting report and the books, records, and files of the Plan within 60 days of the termination or expiration of this Agreement, but not until all fees and payments owed to the TPA have been paid.

6.2 NOTICES. Notices required to be given pursuant this Agreement shall be deemed given when deposited in United States Mail, Certified, and addressed to:

Total Claims Solution
P.O. Box 10888
Green Bay, WI 54307-0888

City of Milwaukee
200 East Wells Street, Room 701
Milwaukee, WI 53202

Attention: President

Attention: Employee Benefits Director

6.3 THIRD PARTY BENEFICIARIES. This Agreement is not intended nor should it be construed to create any rights for any third parties or persons who are not signatories hereto except for the rights to inspection of records provided in Section 6.5.

6.4 WAIVER. No single or successive waiver of any breach of this Agreement or failure to enforce any of its terms and conditions shall be deemed or construed to be a waiver of any preceding or subsequent breaches of this Agreement.

6.5 RECORDS. The TPA shall maintain the books and records pertaining to the Plan Sponsor dating back seven years at all times or until such books and records have been delivered to the Plan Sponsor. The Plan Sponsor and other persons authorized by statute shall have the right to examine and audit the books and records of the Plan subject only to applicable statutory or regulatory restrictions on disclosure. The TPA and Plan Sponsor shall each retain a copy of this Agreement for the duration of the Agreement and for five years thereafter. The TPA shall retain any fiduciary account records for at least five years beginning with the date of creation of the records and shall retain any trust agreement for the duration of the trust agreement and for five years thereafter.

6.6 INVALIDITY. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Neither party shall be deemed to have been the drafter of this Agreement.

6.7 FORCE MAJEURE. In the event of the inability of either party to perform under this Agreement due to causes beyond the party's control, including by way of enumeration but not of limitation, war, fire, explosion, flood, strike, lockout, labor trouble, accident, insurrection, act of governmental authority, injunction, act of God, inability to obtain power, materials, labor, failure of equipment or apparatus, then in such event the disabled party shall provide the other party with prompt written notice of such cause giving rise to the delay and shall be excused from its failure to perform under this Agreement while and to the extent so prevented, but shall resume and complete its performance after removal or cessation of such cause of failure to perform.

6.8 EFFECTIVE DATE. This Agreement shall be effective January 1, 2006, and constitutes the complete and entire understanding between the parties relating to the matters covered herein and may not be altered or amended except by written agreement.

6.9 APPLICABLE LAW. The interpretation of this Agreement and the resolution of disputes shall be governed by the laws of the State of Wisconsin except its conflicts of law or choice of law rules which would require utilizing the law of a different jurisdiction.

6.10 ENTIRE AGREEMENT. This writing contains the final agreement of the parties, all prior oral and written agreements, understandings or representations having been merged into this writing, except any writing specifically referenced herein for inclusion and warranties related to prior work of the TPA for the Plan Sponsor which shall survive without regard to the terms hereof. This Agreement shall not be modified in any way except upon a subsequent writing signed by the parties.

Section 7: **Compliance with Executive Orders.**

The Plan Sponsor is reminded that U.S. Executive Orders and U.S. law prohibits transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Plan Sponsor to ensure compliance with these Executive Orders and laws. This provision must be included in any and all subcontracts issued under this Agreement.

Section 8: **Conflict of Interest**

8.1 Interest in Agreement. No officer, employee or agent of the City of Milwaukee who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect in this Agreement.

8.2 Interest of Other Local Public Officials. No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement, shall have any personal interest, direct or indirect, in this Agreement.

8.3 Interest of TPA and Employees. The TPA covenants that no person described in Section 8.1 and 8.2 above who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interest, direct or indirect, in this Agreement. The TPA further covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The TPA further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. An interest on the part of the TPA or its employees must be disclosed to the City of Milwaukee. Provided, however, that this Section 8.3 shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation by residents of the area.

Section 9: **Discrimination Prohibited**

9.1 In all hiring or employment made possible by or resulting from this Agreement there (1) will not be any discrimination against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status or sexual orientation or familial status, as defined in Section 109-9 of the Milwaukee Code of Ordinances, and (2) affirmative action will be taken to ensure that applicants are employed and that employees are treated during employment without regard to their sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status or sexual orientation or familial status.

This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices required or to be provided by federal or state agencies involved setting forth the provisions of the clause. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to sex, race, religion, color,

national origin or ancestry, age, disability, lawful source of income, marital status or sexual orientation or familial status.

9.2 No person in the United States shall, on the ground of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status or sexual orientation or familial status, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement. The City of Milwaukee and each employer will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.

9.3 The TPA will cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

TPA agrees that they will comply with all applicable requirements of the Americans with Disability Act of 1990, 42 U.S.C. 12101, et seq.

Total Claims Solution
A Division of Claim Management Services, Inc.

City of Milwaukee

Date: _____

Date: _____

SCHEDULE OF FEES

The following fees shall be paid by the Plan Sponsor monthly, except where noted to the contrary.

One-Time Set-Up Fee: \$2,600.00

Annual Administration Fee: \$1,600.00

Annual State Reporting Fee: \$1,020.00

Monthly Administrative Fee Per Employee (Medical): \$16.00

Monthly Administrative Fee Per Employee (Managed Care Review): \$3.25

Monthly Administrative Fee Per Employee (Disease Management): \$1.50

Claims from Providers Located Outside of Wisconsin (per Claim): \$1.00

Document Drafting Fee (Per Medical Document): \$1,000.00

Run-Out Fee: The cumulative Monthly Administration fees noted above (Medical, Managed Care Review and Disease Management) multiplied by three (x 3)

Provider Directories: CMS's Cost Plus Shipping and Handling

The Fees specified above shall not increase by more than 5% for the second and third year, except for any increase in fees necessitated by changes in Plan design or by additional costs or increased liability exposure resulting from governmental laws, regulations, or actions.

SCHEDULE OF PLANS

[TO BE INSERTED ONCE FINALIZED]

SCHEDULE OF REPORTS

<u>Report Title</u>	<u>Distribution Frequency</u>
End of Month Summary	Monthly and Year End
Check Register	Weekly
Benefit Code Analysis	Quarterly
Claim "In Excess"	Quarterly
Top Provider Preference Report	Annually
Medical Population Profile	Quarterly
Precert	Annually
Claim Lag Reports	Upon Request

* Additional Reports are available upon request subject to programming availability.



NOTICE OF PRIVACY PRACTICES

Effective January 1, 2006

TOTAL CLAIMS SOLUTION
A Division of Claim Management Services, Inc.

We keep our members' financial and health information private as required by law, accreditation standards and our own policies. This Notice explains your rights, our legal duties and our privacy practices.

Your Financial Information

We collect and use several types of financial information to carry out health insurance activities. This includes information that you give us on applications or other forms, such as your name, address, age, and dependents. We keep records about your business with our affiliates, others, or us such as insurance coverage, premiums, and payment history.

We use physical, technical, and procedural methods to protect your private information. We share it only with our employees; affiliates or others who need it to provide service on your policy, to do insurance business, or for other legally allowed or required purposes.

You do not need to do anything as a result of this notice. It is meant to inform you of how we protect your nonpublic personal financial information. You may wish to file this with other documents received from us.

Group Health Plan Business Associate Agreement

This Business Associate Agreement ("Agreement") is effective as of January 1, 2006 and is made among Business Associate, and the Group Health Plan ("Plan"), and the Employer ("Employer") named on the signature page of this Agreement.

WITNESSETH AS FOLLOWS:

WHEREAS, Employer has established and maintains a plan of health care benefits which is administered by the Employer or its designee as an employee welfare benefit plan;

WHEREAS, Employer has retained Business Associate to provide certain claims administrative services with respect to the Plan which are described and set forth in a separate Third Party Administration Agreement among those parties ("TPA Agreement"), as amended from time to time;

WHEREAS, Employer is authorized to enter into this agreement on behalf of Plan;

WHEREAS, the parties to this Agreement desire to establish the terms under which Business Associate may use or disclose Protected Health Information (as defined herein) such that the Plan may comply with applicable requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-164) ("HIPAA Privacy Regulation" and/or "HIPAA Security Regulation");

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, the Plan, Employer and Business Associate hereby agree as follows:

PART 1—BUSINESS ASSOCIATE'S RESPONSIBILITIES

I. PRIVACY OF PROTECTED HEALTH INFORMATION

A. Confidentiality of Protected Health Information

Except as permitted or required by this Agreement, Business Associate will not use or disclose Protected Health Information without the authorization of the Individual who is the subject of such information or as required by law.

B. Prohibition on Non-Permitted Use or Disclosure

Business Associate will neither use nor disclose Individuals' Protected Health Information except (1) as permitted or required by this Agreement, or any other

agreement between the parties, (2) as permitted in writing by the Plan or its Plan Administrator, (3) as authorized by Individuals, or (4) as required by law.

C. Permitted Uses and Disclosures

Business Associate is permitted to use or disclose Individuals' Protected Health Information as follows:

1. Functions and Activities on Plan's Behalf

Business Associate will be permitted to use and disclose Individuals' Protected Health Information (a) for the management, operation and administration of the Plan, (b) for the services set forth in the TPA Agreement, which include (but are not limited to) Treatment, Payment activities, and/or Health Care Operations as these terms are defined in this Agreement and 45 Code of Federal Regulations § 164.501, and (c) as otherwise required to perform its obligations under this Agreement and the TPA Agreement, or any other agreement between the parties provided that such use or disclosure would not violate the HIPAA Privacy or Security Regulations if done by the Plan.

2. Business Associate's Own Management and Administration

a. Protected Health Information Use

Business Associate may use Individuals' Protected Health Information as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities.

b. Protected Health Information Disclosure

Business Associate may disclose Individuals' Protected Health Information as necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities only (i) if the disclosure is required by law, or (ii) if before the disclosure, Business Associate obtains from the entity to which the disclosure is to be made reasonable assurance, evidenced by written contract, that the entity will (x) hold Individuals' Protected Health Information in confidence, (y) use or further disclose Individuals' Protected Health Information only for the purposes for which Business Associate disclosed it to the entity or as required by law; and (z) notify Business Associate of any instance of which the entity becomes aware in which the confidentiality of any Individuals' Protected Health Information was breached.

3. Miscellaneous Functions and Activities

a. Protected Health Information Use

Business Associate may use Individuals' Protected Health Information as necessary for Business Associate to perform Data Aggregation services, and to create Deidentified Information, Summary Health Information and/or Limited Data Sets.

b. Protected Health Information Disclosure

Business Associate may disclose, in conformance with the HIPAA Privacy Regulation, Individuals' Protected Health Information to make Incidental Disclosures and to make disclosures of Deidentified Information, Limited Data Set Information, and Summary Health Information.

4. Minimum Necessary

Business Associate will make reasonable efforts to use, disclose, or request only the minimum necessary amount of Individuals' Protected Health Information to accomplish the intended purpose.

D. Disclosure to Plan and Employer (and their Subcontractors)

Other than disclosures permitted by Section I.C above, Business Associate will not disclose Individuals' Protected Health Information to the Plan, its Plan Administrator or Employer, or any business associate or subcontractor of such parties except as set forth in Section VII.

E. Disclosure to Business Associate's Subcontractors and Agents

Business Associate will require its subcontractors and agents to provide reasonable assurance, evidenced by written contract, that such other entity will comply with the same privacy and security obligations with respect to Individuals' Protected Health Information as applies to Business Associate under this Agreement.

F. Reporting Non-Permitted Use or Disclosure

Business Associate will promptly report to the Plan any use or disclosure of Individuals' Protected Health Information not permitted by this Agreement or in writing by the Plan or its Plan Administrator, of which Business Associate becomes aware.

In addition to reporting to Plan any use or disclosure of Protected Health Information not permitted by the Agreement, Business Associate will also report any security incidents of which Business Associate becomes aware. A security incident is an

attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system, and involves only electronic Protected Health Information that is created, received maintained or transmitted by or on behalf of Business Associate, that is in electronic form.

G. Termination for Breach of Privacy Obligations

Without limiting the rights of the parties set forth in the TPA agreement, Plan will have the right to terminate this Agreement and the TPA Agreement if Business Associate has engaged in a pattern of activity or practice that constitutes a material breach or violation of Business Associate's obligations regarding Protected Health Information under this Agreement. Plan will follow the notice of termination procedures as set forth in the TPA Agreement.

Rather than terminating this Agreement as set forth above, Plan shall provide Business Associate with an opportunity to cure the material breach. If these efforts to cure the material breach are unsuccessful, as determined by Plan in its reasonable discretion, Plan shall terminate the TPA Agreement and this Agreement, as soon as administratively feasible.

H. Disposition of Protected Health Information

1. Return or Destruction Upon TPA Agreement End

The parties agree that upon cancellation, termination, expiration or other conclusion of the TPA Agreement, destruction or return of all Protected Health Information, in whatever form or medium (including in any electronic medium under Business Associate's custody or control) is not feasible given the regulatory requirements to maintain and produce such information for extended periods of time after such termination. In addition, Business Associate is required to maintain such records to support its contractual obligations with its vendors and network providers. Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those consistent with applicable law for so long as Business Associate, or its subcontractors or agents, maintains such Protected Health Information. Business Associate may destroy such records in accordance with applicable law and its record retention policy that it applies to similar records.

2. Exception When Affiliate of Business Associate Becomes Plan's Health Insurance Issuer

If upon cancellation, termination, expiration or other conclusion of the TPA Agreement, an affiliate of Business Associate becomes the Plan's health insurance underwriter, then Business Associate shall transfer any Protected Health Information that Business Associate created or received for or from Plan to that affiliate of Business Associate responsible for health insurance functions.

3. Survival of Termination

The provisions of this Section I.H. shall survive cancellation, termination, expiration, or other conclusion of this Agreement and the TPA Agreement.

II. ACCESS, AMENDMENT AND DISCLOSURE ACCOUNTING

A. Access.

Unless otherwise limited by applicable laws and regulations, whenever feasible, and to the extent that responsible information is in the possession of Business Associate, Business Associate will provide access to Protected Health Information as required by 45 C.F.R. § 164.524 on Plan's behalf. Such provision of access will not relieve Plan of any additional and independent obligations to provide access where requested by an Individual. Such access shall be provided in a time and manner consistent with Business Associate's procedures for access, which Business Associate hereby represents comply with the requirements of 45 C.F.R. § 164.524. Accordingly, upon Plan's written request or the direct request of an Individual (or the Individual's Personal Representative), Business Associate will make available for inspection and obtaining copies by Plan, or at Plan's direction by the Individual (or the Individual's Personal Representative), any Protected Health Information about the Individual created or received for or from Plan in Business Associate's custody or control contained in a Designated Record Set, so that Plan may meet its access obligations under 45 C.F.R. § 164.524. All fees related to this access, as determined by Business Associate, shall be borne by Individual.

B. Amendment.

Whenever feasible, and to the extent that responsive information is in the possession of Business Associate, Business Associate will amend Protected Health Information as required by 45 C.F.R. § 164.526 on Plan's behalf. Business Associate will amend such Protected Health Information according to its own procedures for such amendment. Business Associate represents that its procedures for such amendment comply with applicable requirements of 45 C.F.R. § 164.526. Such amendment will not relieve Plan of any additional and independent obligations to amend Protected Health Information where requested by an Individual. Accordingly, upon Plan's written request, or the direct request of an Individual (or the Individual's Personal Representative), Business

Associate will amend such Protected Health Information contained in a Designated Record Set, in accordance with the requirements of 45 C.F.R. § 164.526. Upon receipt of written notice from Plan, Business Associate will amend any portion of the Protected Health Information created or received for or from Plan in Business Associate's custody or control, so that Plan may meet its amendment obligations under 45 C.F.R. § 164.526.

C. Disclosure Accounting.

In order that Plan may satisfy its Disclosure Accounting obligations under 45 C.F.R. § 164.528(d), Business Associate agrees to record each disclosure, not excepted from Disclosure Accounting under 45 C.F.R. § 164.528(a)(1), that Business Associate makes to Plan or to a third party of Protected Health Information in accordance with the requirements of 45 C.F.R. § 164.528(b). Business Associate will make its Disclosure Accounting available to Plan in a time and manner that would enable Plan to comply with its obligations under 45 C.F.R. § 164.528.

D. Disclosure Accounting Time Periods.

Business Associate will have available for Plan the Disclosure Accounting information it must record to satisfy Plan's obligations under 45 C.F.R. § 164.528 for the six (6) years immediately preceding the date of Plan's or Individual's (or the Individual's Personal Representative) written request for the Disclosure Accounting information (except that Business Associate will not be required to have such Disclosure Accounting information for disclosures occurring prior to April 14, 2003). Disclosure Accounting shall be provided according to Business Associate's own procedures for such accounting. Business Associate represents that its procedures for such accounting comply with the requirements of 45 C.F.R. § 164.528. Such provision of Disclosure Accounting will not relieve Plan of any additional and independent obligations to provide Disclosure Accounting when requested by an Individual. Accordingly, upon Plan's written request or the direct request of an Individual (or the Individual's Personal Representative), Business Associate will provide a Disclosure Accounting in accordance with 45 C.F.R. § 164.528.

E. Request for Restriction and Confidential Information.

Whenever feasible and to the extent that communications are within the control of Business Associate, Business Associate will evaluate and determine whether to grant Requests for Restriction and Confidential Communications in connection with the Disclosure of Protected Health Information pursuant to 45 C.F.R. § 164.522. A Request for Restriction shall only apply to the extent that such restriction may affect Business Associate's Use or Disclosure of an Individual's Protected Health Information. Business Associate will evaluate and determine whether to grant such requests

according to its own procedures for such requests, and shall implement such appropriate operational steps as required by its own procedures. Business Associate represents that its procedures for evaluation and determination regarding such requests complies with the requirements of 45 C.F.R. § 164.522. Such evaluation and determination will not relieve Plan of any additional and independent obligations to evaluate Requests for Restriction or implement Confidential Communications when requested by an Individual. Accordingly, upon Plan's written request or the direct request of an Individual (or the Individual's Personal Representative), Business Associate will evaluate and determine whether to grant Requests for Restriction or Confidential Communications and will respond to these requests as appropriate under Business Associate's procedures.

F. Applicable Laws and Regulations.

The phrase "applicable laws and regulations" shall mean the Privacy Regulation and any state law or regulation governing the privacy and/or confidentiality of an Individual's health information that is not otherwise preempted by the Privacy Regulation.

III. SAFEGUARD OF PROTECTED HEALTH INFORMATION

Business Associate will develop and maintain reasonable and appropriate administrative, technical and physical safeguards, as required by Social Security Act § 1173(d) and 45 Code of Federal Regulations §164.530(c), to ensure and to protect against reasonably anticipated threats or hazards to the security or integrity of health information, to protect against reasonably anticipated unauthorized use or disclosure of health information, and to reasonably safeguard Protected Health Information from any intentional or unintentional use or disclosure in violation of this Agreement.

Business Associate will also develop and use appropriate administrative, physical and technical safeguards to preserve the Availability of electronic Protected Health Information, in addition to preserving the integrity and confidentiality of such Protected Health Information. The "appropriate safeguards" Business Associate uses in furtherance of 45 Code of Federal Regulations §164.530(c), will also meet the requirements contemplated by 45 Code of Federal Regulations Parts 160, 162 and 164, as amended from time to time.

IV. COMPLIANCE WITH STANDARD TRANSACTIONS

On and after October 16, 2003, Business Associate will comply with each applicable requirement for Standard Transactions established in 45 Code of Federal Regulations

Part 162 when conducting all or any part of a Standard Transaction electronically for, on behalf of, or with the Plan.

V. INSPECTION OF BOOKS AND RECORDS

Business Associate will make its internal practices, books, and records relating to its use and disclosure of Protected Health Information created or received for or from the Plan available to the U.S. Department of Health and Human Services to determine Plan's compliance with 45 Code of Federal Regulations Parts 160-64 or this Agreement.

VI. MITIGATION FOR NON-PERMITTED USE OR DISCLOSURE

Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

PART 2 – PLAN'S RESPONSIBILITIES

VII. PLAN'S NOTICE OF PRIVACY PRACTICES

I. Preparation of Plan's Notice of Privacy Practices.

Plan shall be responsible for the preparation of its Notice of Privacy Practices ("NPP"). Plan will be solely responsible for the review and approval of the content of its NPP, including whether its content accurately reflects Plan's privacy policies and practices, as well as its compliance with the requirements of 45 C.F.R. § 164.520. Unless advance written approval is obtained from Business Associate, the Plan shall not create any NPP that imposes obligations on Business Associate that are in addition to or that are inconsistent with the obligations assumed by Business Associate hereunder.

J. Distribution of Notice of Privacy Practice.

Plan shall bear full responsibility for distributing its own NPP as required by the Privacy Regulation.

K. Changes to Protected Health Information.

Plan shall notify Business Associate of any change(s) in, or revocation of, permission by an Individual to Use or Disclose Protected Health Information, to the extent that such change(s) may affect Business Associate's Use or Disclosure of such Protected Health Information.

PART 3—DISCLOSURE OF PROTECTED HEALTH INFORMATION TO THE PLAN, EMPLOYER AND OTHER BUSINESS ASSOCIATES

VIII. DISCLOSURE OF PROTECTED HEALTH INFORMATION

The following provisions apply to disclosures of Protected Health Information to the Plan, Employer and other business associates of the Plan.

L. Disclosure to Plan

Unless otherwise provided by this Section VII, all communications of Protected Health Information by Business Associate shall be directed to the Plan.

M. Disclosure to Employer

Business Associate may provide Summary Health Information regarding the Individuals in the Plan to Employer upon Employer's written request for the purpose either (a) to obtain premium bids for providing health insurance coverage for the Plan, or (b) to modify, amend or terminate the Plan.

Business Associate may provide information to Employer on whether an individual is participating in the Plan or is enrolled in or has disenrolled from any insurance coverage offered by the Plan.

N. Disclosure to Other Business Associates and Subcontractors

Business Associate may disclose Individuals' Protected Health Information to other entities or business associates of the Plan if the Plan authorizes Business Associate in writing to disclose Individuals' Protected Health Information to such entity or business associate. The Plan shall be solely responsible for ensuring that any contractual relationships with these entities or business associates and subcontractors comply with the requirements of 45 Code of Federal Regulations § 164.504(e) and § 164.504(f).

PART 4—MISCELLANEOUS

IX. AGREEMENT TERM

This Agreement will continue in full force and effect for as long as the TPA Agreement remains in full force and effect. This Agreement will terminate upon the cancellation, termination, expiration or other conclusion of the TPA Agreement.

X. AUTOMATIC AMENDMENT TO CONFORM TO APPLICABLE LAW

Upon the effective date of any final regulation or amendment to final regulations with respect to Protected Health Information, Standard Transactions, the security of health information or other aspects of the Health Insurance Portability and Accountability Act of 1996 applicable to this Agreement or to the TPA Agreement, this Agreement will automatically amend such that the obligations imposed on the Plan, Employer, and Business Associate remain in compliance with such regulations, unless Business Associate elects to terminate the TPA Agreement by providing Employer notice of termination in accordance with the TPA Agreement at least thirty (30) days before the effective date of such final regulation or amendment to final regulations.

XI. CONFLICTS

The provisions of this Agreement will override and control any conflicting provision of the TPA Agreement. All other provisions of the TPA Agreement remain unchanged by this Agreement and in full force and effect.

XII. NO THIRD PARTY BENEFICIARIES

The parties agree that there are no intended third party beneficiaries under this Agreement. This provision shall survive cancellation, termination, expiration, or other conclusion of this Agreement and the TPA Agreement.

XIII. INDEMNIFICATION

(a) Business Associate agrees to indemnify, defend, and hold harmless the Plan and the Employer, and their employees and officers, (each an "Indemnified Party"), against any and all losses, liabilities, costs, fines, penalties, and expenses (including attorney's fees) the Indemnified Party may incur arising out of or in connection with any violation by Business Associate of any of the provisions of this Agreement, or breach of any warranty or representation made by Business Associate herein, or from any negligent or wrongful acts or omissions of Business Associate. Business Associate agrees to accept the tender of defense of any claim or action falling within the scope of this indemnity.

(b) The Employer agrees to indemnify, defend, and hold harmless the Business Associate against any and all losses, liabilities, costs, fines, penalties, and expenses (including attorney's fees) the Business Associate may incur arising out of or in connection with (1) any breach of the obligations of the Plan under Section VII hereof, and (2) any action of Business Associate taken at the direction of the Plan pursuant to

Section II, paragraphs A, B, C, D, and E of this Agreement, to the extent that such direction is inconsistent with the determinations and actions of Business Associate pursuant to its obligations to provide information to an Individual under this Agreement. In the event that Business Associate determines that any direction of the Plan is inconsistent with Business Associate's obligations under this agreement, it shall advise the Plan in writing prior to implementing such direction of the Plan.

XIV. INTERPRETATION

Any ambiguity in this Agreement or the TPA Agreement or in operation of the Plan shall be resolved to maintain compliance with the Regulations enacted pursuant to HIPAA Administrative Simplification.

XV. DEFINITIONS

Unless otherwise defined in this Agreement, the capitalized terms set forth herein have the meanings ascribed to them under the HIPAA Privacy Regulation and/or HIPAA Security Regulation. A reference in this Agreement to the Privacy Regulation, Security Regulation or HIPAA shall mean the section as in effect or as amended,

XVI. REFERENCES

References herein to statutes and regulations shall be deemed to be references to those statutes and regulations as amended or recodified.

Business Associate:
Total Claims Solution
A Division of Claim Management Services, Inc.

Name of Business Associate

On Behalf of the Group Health Plan and Employer:
City of Milwaukee

Name of Group Health Plan/Employer

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

