

RDS SERVICES, LLC

AGREEMENT FOR RETIREE DRUG SUBSIDY RE-OPENING SERVICES

THIS AGREEMENT FOR RETIREE DRUG SUBSIDY RE-OPENING SERVICES ("Agreement") is entered into by and between RDS Services, LLC, a Michigan limited liability company ("RDS") and City of Niagara Falls ("Plan Sponsor") and or ("Plan Authorized Representative") and shall be effective as of _____, 2019 ("Effective Date").

Definitions and Contract Amendment:

The term "Plan Authorized Representative" shall mean: City of Niagara Falls

The term "Plan Sponsor" will have the same meaning as "Plan Authorized Representative" in the contract's terms and conditions.

The term "Plan Authorized Representative" will have the same meaning as "Plan Sponsor" in the contract's terms and conditions.

By substituting the "Plan Authorized Representative" for the "Plan Sponsor", the "Plan Authorized Representative" City of Niagara Falls agrees to pay the agreed upon gross remuneration of 25% of the subsidy recovery to RDS Services, LLC. All other terms of the compensation agreement with the producer will remain the same.

Terms and conditions:

Plan Sponsor, though the ("Plan Authorized Representative") maintains a group health program (hereinafter referred to as the "Plan") under which eligible individuals are able to obtain certain retiree health care benefits. Plan Sponsor desires to engage RDS to assist Plan Sponsor with certain requirements and opportunities with respect to the Re-Opening of previously closed RDS Application plan years, and RDS desires to provide such assistance, all on the terms and subject to the conditions set forth in this Agreement.

NOW THEREFORE, the parties agree as follows:

**SECTION 1
SERVICES AND RESPONSIBILITIES**

RDS Services. During the term of this Agreement, RDS shall provide to Plan Sponsor the services described on **Exhibit A** to this Agreement (collectively, "RDS Services"). In performance of the RDS Services, RDS shall rely on any communication and/or data reasonably believed by it to be genuine, including necessary information received from Plan Sponsor in a timely manner and in good order. For purposes hereof, "timely manner" means a reasonable period of time as may be necessary for sorting, processing, analyzing, entering and/or posting of information received.

Responsibilities of Plan Sponsor. Plan Sponsor (or its designee(s) other than RDS) shall serve as the administrator, fiduciary and primary decision maker for the Plan, with all of the rights and responsibilities for administering the Plan in connection with the Retiree Drug Subsidy Program, and RDS shall have no such authority or responsibility except as may be specifically provided in this Agreement. During the

term of this Agreement, and as a condition to RDS' obligation to provide the RDS Services, Plan Sponsor's responsibilities shall include the responsibilities set forth on **Exhibit B** to this Agreement.

1.03 Compensation. The fees for the RDS Services are set forth on **Exhibit C** to this Agreement. RDS shall send an invoice to Plan Sponsor for fees. Payment shall be due 15 days after receipt of invoice. Accounts and invoices not paid by the later of the end of the month, or within 30 days of billing, are considered delinquent and are subject to a monthly service charge of 1.5 percent (1.5%) of the delinquent amount. Late fees and charges shall not apply where there is a bona fide dispute as to the amount owed.

1.04 Caveats. By its execution of this Agreement, Plan Sponsor is acknowledging its knowledge, understanding and agreement to the specific items set forth on **Exhibit D** to this Agreement regarding the RDS Services.

1.05 Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, RDS DISCLAIMS TO THE FULLEST EXTENT PERMISSIBLE BY LAW ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO THE NATURE OR STANDARD OF THE RDS SERVICES HEREUNDER, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL RDS BE LIABLE FOR SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF USE.

SECTION 2 RELATIONSHIP OF THE PARTIES

2.01 Independent Contractor. In performing services under this Agreement, RDS performs all acts as an independent contractor and not as an officer, employee or agent of the Plan. Nothing in this Agreement shall be construed to mean that Plan Sponsor (or any of its agents) retains any control over the manner and means of how RDS performs the services provided for herein, but only a right to review the results of the work performed.

2.02 Not a Fiduciary or Insurer. Plan Sponsor is the named fiduciary and/or primary decision maker of the Plan. As fiduciary and/or decision maker, Plan Sponsor maintains discretionary authority and responsibility in the administration and operation of the Plan, including, but not limited to, the determination of covered services, interpretation of the terms of the Plan, and the determination of eligibility for and entitlement to benefits under the Plan in accordance with the terms of the Plan. RDS does not assume any responsibility for any act, omission or breach by any fiduciary.

SECTION 3 TERM AND TERMINATION

3.01 Term. The term of this Agreement shall be one year, commencing on _____, 2019 and ending _____, 2019. Thereafter, this Agreement will renew itself for additional one year terms if neither party gives notice to the other to terminate or renegotiate the Agreement.

3.02 Termination. This Agreement may be terminated by either party only as follows:

1. During the initial one year term of this Agreement, the Agreement may be terminated by either party only as follows:

- a. By either party as of the date the other voluntarily or involuntarily files for bankruptcy protection for any or all portion of its business operations;
 - b. Effective upon thirty (30) days advance notice to the other party.
 - c. By mutual agreement of the parties.
2. After the initial term of this Agreement, either party may terminate or modify this Agreement, as follows:
 - a. By either party as of the date the other voluntarily or involuntarily files for bankruptcy protection for any or all portion of its business operations;
 - b. By giving the other party thirty (30) days written notice prior to the expiration of any renewal term; or
 - c. By mutual agreement of the parties.

3.03 Obligations After Contract Termination; Survival. All responsibilities of either party under this Agreement shall terminate upon the termination of this Agreement, except that the following rights and liabilities of the parties shall survive the termination of this Agreement for the specified time period as provided below or as otherwise agreed by the parties hereto:

- (a) Plan Sponsor's duty to pay RDS for amounts due to RDS hereunder, including without limitation amounts due to RDS on account of Subsidy payments received by Plan Sponsor after termination of this Agreement as a result of RDS Services performed by, or reimbursement requests made by, RDS prior to termination of this Agreement, until such amounts are paid in full.
- (b) Plan Sponsor's and RDS' respective duties hereunder that are predicated on, or reasonably contemplate continuation beyond, the termination of this Agreement, including, but not limited to, this Section 3.03 and Sections 3.04, 3.05, 3.06, and 5.02. Notwithstanding the foregoing, such duties shall not survive beyond the duration of any applicable statute of limitations.
- (c) Plan Sponsor's and RDS' indemnification duties and liabilities under Section 4 hereof with respect to events and claims arising before the termination of the Agreement, until the appropriate statute of limitations has run.

3.04 Outstanding Fees; Records. Upon termination of this Agreement, Plan Sponsor agrees to remit to RDS any outstanding balances due (or which, under Section 3.03(a), becomes due) under this Agreement. Without limiting other available remedies, RDS shall have the right to retain all records in its possession with regard to its services pursuant to this Agreement until receipt of all outstanding monies due.

3.05 Cooperation with Successor. In the event Plan Sponsor appoints a successor to RDS for any or all of RDS' services described herein, RDS shall cooperate as reasonably necessary in transferring files, records, reports and the like, and RDS shall be entitled to reasonable compensation for its services in connection therewith. Notwithstanding any provision of this Agreement (including any exhibit or addendum hereto), to the contrary, RDS shall not, without prior written agreement with Plan Sponsor, be obligated to assist a successor to RDS or otherwise take or continue any action following termination of

the Agreement if and to the extent such assistance or action may reasonably be viewed as causing RDS to become a fiduciary with respect to the Plan in any manner.

3.06 Access to Information. Plan Sponsor shall have the right, upon providing reasonable notice, to periodically review, at its own expense, any records of RDS relating to the services provided herein; any examination of such records shall be carried out in a manner mutually agreeable to RDS and Plan Sponsor and to the extent permitted by applicable law.

SECTION 4 INDEMNIFICATION

4.01 Indemnification by Plan Sponsor. Plan Sponsor agrees to indemnify RDS, its officers, directors, employees and agents for and hold them harmless from any claim, liability, cost, loss, expense or damage (including reasonable attorney fees) which may be paid or incurred by RDS resulting from or in connection with a material breach by Plan Sponsor of its responsibilities and duties outlined under this Agreement.

4.02 Indemnification by RDS. RDS agrees to indemnify Plan Sponsor, its officers, directors, employees and agents for and hold them harmless from any claim, liability, cost, loss, expense or damage (including reasonable attorney fees) which may be paid or incurred by Plan Sponsor resulting from or in connection with a material breach by RDS of its responsibilities and duties outlined under this Agreement.

SECTION 5 GENERAL PROVISIONS

5.01 Amendment; Assignment. This Agreement may not be amended without the express written consent of both parties. No assignment by either party pertaining to this Agreement shall be valid without the express written consent of the other party, which consent will not be unreasonably withheld.

5.02 Confidentiality. RDS recognizes that it shall be provided with personal information regarding Members of Plan in the course of providing services under this Agreement. RDS shall safeguard such information to ensure that no person who does not need to know such information has access to such information. To the extent required by law, RDS will enter into a "Business Associate Agreement" with the Plan and/or Plan Sponsor.

5.03 Entire Agreement. This Agreement (including any exhibits or addenda hereto) constitutes the complete and exclusive statement of the terms of the agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, promises, and arrangements, oral or written, between the parties with respect to the subject matter hereof.

5.04 Governing Law. To the extent not preempted by federal law, including ERISA, this Agreement shall be governed by and construed in accordance with the laws of the State of Michigan without regard to conflicts-of-law principles that would require the application of any other law..

5.05 Headings. The headings of this Agreement are solely for the convenience of the parties and do not affect the meaning or interpretation of any provision of this Agreement.

5.06 Notice. Any notice required to be given hereunder between the parties shall be written, effective upon receipt and shall be served by facsimile or by personal delivery or certified mail, return receipt

requested to the address cited in the signature block of this Agreement or to such other address as shall be specified by like notice by either party.

5.07 Other Service Providers; No Legal or Tax Advice. RDS may seek the services of others in performing its duties and obligations under this Agreement. Such service providers shall not have access to personal health information of Plan Sponsor's Members unless such service providers sign a business associate agreement with RDS which is substantially the same as the business associate agreement executed between RDS and the Plan and/or Plan Sponsor. Plan Sponsor acknowledges and agrees that RDS' services pursuant to this Agreement are in the nature of consulting, logistical and non-discretionary ministerial services and are not intended, and shall not be construed or characterized as, the provision of legal or tax advice or professional fiduciary services.

5.08 Successor and Assigns; Waiver. Subject to the provisions of Section 5.01 above, this Agreement shall be binding upon and inure to the benefit of and be enforceable against the parties hereto and their respective successors and assigns. Failure to enforce any provision of this Agreement shall not affect the rights of the parties to enforce such provision in another circumstance or their right to enforce any other provision of this Agreement at any time. If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in this Agreement.

5.09 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single agreement.

EXHIBIT A

RDS SERVICES

During the term of this Agreement, RDS shall provide the following services, as more specifically detailed in Sections 1 through 4 below:

1) RDS Services – Initial Preparation For A Re-Opening.

- (a) Work with Plan Sponsor team to gather, review and assess prior year RDS Applications, data received from vendor(s) and data sent to CMS for those plan years under consideration for Re-Opening.
- (b) Identify all potential “data sources” for client engagement

2) Specific RDS Services –Data Management Services

- (a) Build an “import application” specific to each data source
- (b) Develop and test vendor specific data mapping (technical architecture and design for client specifications)
- (c) Import all data from all “pre-identified” sources into proprietary database application

Using proprietary application to:

- i. Review and analyze, Medicare Eligible members (“MEM”)
- ii. Review and qualify costs associated with a MEM by plan year
- iii. Identify “outlier” data sets for review by RDS Program Analysts
- iv. Capture and match members; identify mismatched data elements
- v. Validate common membership data
- vi. Match prescription drug cost data to “unique” MEMs found
- vii. Aggregate prescription drug claims for individuals with multiple benefit plan options
- viii. Track threshold and cost limits over multiple plan years
- ix. Prepare a request for “Re-opening” as available under CMS’s Retiree Drug Subsidy program, in connection with the Plan (as described in 42 CFR 423.880 through 888).
- x. Submit “aggregated” Cost Summary to CMS

3) Specific RDS Services – Administrative/Recordkeeping. During the term of this Agreement, RDS shall provide the following ongoing services:

- (a) Establish project timelines, establish and run regular “progress” meetings
- (b) Correspond with CMS regarding “Re-Opening Request”
- (c) Track and Report status of pending “Re-opening”
- (d) Act as liaison with data vendors (i.e. carriers, PBM’s, TPA’s)
- (e) Maintain Non-Medicare NDC Claim “Exclusion” tables

- (f) Maintain Data Security Protocols
- (g) Maintain and update a database containing Plan Sponsor data, including, but not limited to, member eligibility and prescription drug claim data collected for the purpose of compiling and aggregating data under the Plan and/or under the RDS Program;
- (h) Maintain other appropriate records regarding the Plan in respect to the RDS Program as may be required by federal law; and
- (i) Assist Plan Sponsor with submission of, or access to, the records in RDS' database as may be required for CMS regulatory, audit, and/or other business purposes.

4) Specific RDS Services –Submission Requirements for Re-Opening

- (a) Become assigned as vendor, Account Manager and/or designee on RDS Account
- (b) Review and upload "Retiree List" to RDS for approval
- (c) Complete all retiree data transfers to carriers or PBMs, if applicable
- (d) Final review of MEM records
- (e) Complete 1st 11 steps of the Re-opened Reconciliation for CMS
- (f) Complete Payment Setup requirements

EXHIBIT B

RESPONSIBILITIES OF PLAN SPONSOR

Provide Access to Retiree Plan Information and Provide Support Retrieving Vendor Files. Plan Sponsor shall:

- (a) To meet with RDS to discuss engagement; assist RDS to identify all potential member and claim data sources; provide contact information of current and past vendors; review prior RDS applications;
- (b) Provide a complete and accurate set of current and past enrollment records for all employee and retiree members under the Plan. Such records shall be delivered to RDS in an electronic format acceptable to RDS as soon as practicable following the Effective Date;
- (c) Make available, or cause to be made available to RDS, certain reports and information to which Plan Sponsor has access, as mutually agreed to by the parties. Such reports and information may include, but shall not be limited to: (i) attestation that an employee or retiree member is, or was for the applicable plan year, eligible for benefits under the Plan; (ii) verification of certain members identifying information; (iii) verification of RDS Eligible Retiree coverage period. Upon request, Plan Sponsor shall provide RDS with any other reasonable and necessary information regarding Retiree Members;
- (d) To enable RDS to fulfill its duties regarding the RDS subsidy, Plan Sponsor agrees to assist in providing, or locating the original data files that support the last CMS Reconciliation Cost Summaries that are the subject of this Re-opening engagement. Absent these files, RDS's ability to conduct an optimal and accurate Re-Opening analysis may be compromised;
- (e) To enable RDS to fulfill its duties regarding the RDS subsidy, Plan Sponsor agrees to assist RDS with engaging the PBM and carrier vendors; supporting RDS if vendor is not cooperating with the data file requests;
- (f) Be solely responsible to inform RDS of any changes in the information it previously supplied RDS.

Re-Openings, RDS Applications and Related Tasks

- (a) To enable RDS to fulfill all of its duties regarding the RDS Subsidy, Plan Sponsor consents to and authorizes RDS' designation of an employee or a representative of RDS to be the Account Manager and/or a designee for purposes of the RDS application(s) re-opened, with the necessary authority to (i) begin the re-opening process on behalf of Plan Sponsor, and (ii) have and maintain full access to Plan Sponsor's RDS Applications.
- (b) To enable RDS to fulfill all of its duties regarding the RDS Program, Plan Sponsors consents to and authorizes RDS' designation of employees or representatives of RDS to act as designees in connection with the RDS application(s) re-opened, with the necessary authority to (i) gather, organize and submit appropriate information to CMS and (ii) request RDS payments from CMS.

- (c) Plan Sponsor shall provide its full and good faith cooperation in the procurement; access and/or review of such other reasonable information as may be determined by RDS to be reasonably necessary in order to perform its services hereunder.

Except as may be otherwise agreed to by RDS, Plan Sponsor specifically agrees that:

- (i) All electronic communications between CMS and Plan Sponsor or any of its employees or agents shall exclusively be conducted through the Server, URL address, email address and/or website established or approved by RDS for Plan Sponsor, and
- (ii) Any electronic communication related to this Agreement to CMS from Plan Sponsor or any of its employees or agents shall only be initiated with the knowledge and consent of the RDS Account Manager.

HIPAA Compliance.

Notwithstanding any provision in this Agreement to the contrary, Plan Sponsor shall, during the term of this Agreement, be solely responsible for ensuring that the Plan is and remains in full compliance with the privacy and security requirements under the Health Insurance Portability and Accountability Act (HIPAA) and implementing regulations. In particular, Plan Sponsor shall have in place all necessary business associate agreements, Plan amendments, and related documentation to the extent required under HIPAA in order to (i) permit the disclosure of protected health information (within the meaning of HIPAA) to Plan Sponsor and (ii) establish the permitted and required uses and disclosures of protected health information by Plan Sponsor.

EXHIBIT C
COMPENSATION

RDS' compensation for the services provided pursuant to the Agreement shall be:

1. Re-Opening Subsidy Services. For the RDS Services as described in Sections 1, 2, 3 and 4 of **Exhibit A** to this Agreement, the fee for such RDS Services shall be equal to **25%** (twenty five percent) of each Subsidy payment received by Plan Sponsor from CMS as a result of any Re-Opening services performed by RDS or reimbursement requests made by RDS pursuant to this Agreement. A re-opening engagement may include a review of multiple plan years.

HOW YOUR FEE IS CALCULATED

For purposes of clarifying the foregoing language and table, it is understood that: 1. Fees shall be paid to RDS based on this Agreement after the Plan Sponsor receives a subsidy payment as stated in *paragraph 1.03*. 2. The percentage(s) to be used to calculate RDS' Fees based on particular subsidy payment shall be based on the aggregate amount of subsidy payments the Plan Sponsor has already received from CMS for years re-opened pursuant to the Agreement.

EXHIBIT D

CAVEATS

Plan Sponsor acknowledges, understands and agrees to the following with respect to Re-Opening Subsidy services:

- In the event that RDS concludes that the Plan does not qualify for additional Subsidy, RDS' Re-Opening engagement will end with no residual duty or obligation for RDS (RDS will try and make this determination as soon as possible following the receipt of all pertinent data collected for the re-opening engagement);
2. Plan Sponsor has been given a copy of the "Request for Re-Opening" and acknowledges that upon re-opening a previously closed plan year, all discoveries of missing or incorrect data applicable to that plan year, must be reported to CMS.
 3. Plan Sponsor understands that the additional subsidy found may vary substantially and it is not possible to accurately predict the amount of such subsidy for any given plan year re-opened. Plan Sponsor's actual additional Subsidy will be calculated based on identifying additional member and claim data not reported during the plan's initial Reconciliation;
 4. In generating benefit cost information for purposes of requesting Subsidy payments, RDS may need to filter out certain claims that may not qualify under the RDS Program and are therefore ineligible for Subsidy payments. Due to impracticalities that are inherent in any filtering process (e.g., whether a claim should or should not be filtered out in this process may depend on factual circumstances that could not be known by RDS or any other vendor), RDS will adopt, unless instructed otherwise by Plan Sponsor, a conservative approach that errs in favor of excluding claims that potentially may NOT be covered under the CMS statute and any regulations forthcoming. This conservative approach is intended to minimize the possibility of Plan Sponsor improperly receiving more payments than is legally permitted under the RDS program;
 5. In generating benefit cost information for purposes of requesting RDS payments, RDS will need to report to CMS any rebates or other provider discounts, credits or like amounts received by the Plan Sponsor or the Plan; and
 6. RDS will also keep Plan Sponsor up to date on the progress of receipt of any subsidy amounts.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, effective as of the Effective Date, by their duly authorized officers.

RDS Services, LLC

City of Niagara Falls

By: _____

By: _____

Name: George Fox, LUTCF

Name: _____

Title: National Sales Director

Title: _____

Address: 50 W. Big Beaver Road
Suite 220
Troy, MI 48084

Address: _____

Date: _____

Date: _____