BENEFIT PLANS ADMINISTRATIVE SERVICES, INC. (BPAS)

EMPLOYER BENEFIT PLAN ADMINISTRATIVE SERVICES AGREEMENT

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BENEFIT PLANS ADMINISTRATIVE SERVICES, INC. (BPAS)

EMPLOYER BENEFIT PLAN ADMINISTRATIVE SERVICES AGREEMENT

Houston Baptist University ("Employer") has asked *BPAS* to provide administrative services ("Services") for certain employee benefit plans and programs ("Benefit Plans") and arrangements maintained by Employer as described in this *BPAS* Employer Benefit Plan Administrative Services Agreement ("Agreement"). In consideration of the mutual promises contained in this Agreement, Employer and *BPAS* agree as follows:

ARTICLE I. INTRODUCTION

1.1 Effective Date and Term

The effective date of this Agreement is January 1, 2016 ("Effective Date") and will continue until such time as the Agreement is terminated in accordance with Section 6.8 herein. Each Addendum attached hereto is incorporated into by reference and made a part of this Agreement. An Addendum may have a later effective date than this Agreement to the extent that Employer and *BPAS* agree to the terms set forth in the Addendum after this Agreement has already become effective. The responsibilities of the parties set forth in the Addendums are in addition to any responsibilities set forth in the Agreement. If there is a conflict between the Addendums and the Agreement, the Agreement controls.

1.2 Scope of Undertaking-Generally

Employer understands that *BPAS* is and will remain an independent contractor and will not be deemed an employee of Employer, a partner or engaged in a joint venture with Employer, or governed by any legal relationship other than that of independent contractor. *BPAS'* only obligation under this Agreement is to the Employer and nothing under this Agreement shall be deemed to confer any responsibility on *BPAS* to any person covered under the Benefit Plans ("Covered Individual"). Employer acknowledges that *BPAS* is not an accounting or law firm and no services provided by *BPAS* in accordance with this Agreement will be construed as tax or legal advice as a result of providing such services. This Agreement sets forth certain rights and obligations of Employer and *BPAS* and the terms of this Agreement shall apply to any assignee or successor of Employer and/or *BPAS*.

The services to be provided by BPAS shall include:

- Consulting with Employer regarding design of Benefit Plans, including a cafeteria plan, health flexible spending accounts, dependent care flexible spending accounts, health reimbursement arrangement accounts, a health savings account program and/ or qualified transportation accounts, as applicable;
- Providing draft initial Benefit Plan document(s) template(s) for review by legal counsel for the Employer;
- Preparation of electronic enrollment and communication materials;
- Enrollment of employees into our software system;
- Monitoring Benefit Plan usage for compliance with applicable nondiscrimination tests under Section 125

and Section 129 of the Internal Revenue Code of 1986, as amended and applicable;

- Establishing Internet access/database for Participant/Plan Sponsor account inquiry;
- Administration and accounting of notional deposits and disbursements from salary reduction contributions and spending credit dollars, as applicable;
- Processing of account reimbursements, as applicable;
- Preparation and delivery to plan sponsor of applicable annual reporting and disclosure forms for timely filing with appropriate governmental agency;
- Implementation and administration of health savings accounts, if applicable, in accordance with the terms and conditions of the "Health Savings Account Administration Addendum" attached hereto and incorporated in this Agreement;
- Implementation and administration of debit cards for claims payment, if applicable. Maintenance and utilization of debit cards shall be governed under the terms and conditions of the "Card Service Addendum" attached hereto and incorporated in this Agreement.

ARTICLE II. EMPLOYER RESPONSIBILITIES

Employer will be responsible for the items described in this Section II and any additional items described in the Services Addendums attached hereto.

2.1 Employer's Responsibilities

Employer has sole responsibility for establishment and operation of the Benefit Plans. Employer shall have sole discretionary authority and responsibility for construing and interpreting the provisions of the Benefit Plans and deciding all questions of fact and/or interpretation arising under the Benefit Plans. Employer will not represent to Covered Individuals or to any third party that *BPAS* is the "Plan Administrator" as that term is generally defined in ERISA Sec. 3(16) (without regard to whether ERISA applies or not). It is Employer's sole responsibility and duty to ensure compliance with all applicable laws and regulations, and *BPAS*' provision of services under this Agreement does not relieve the Employer of this obligation. *BPAS*' responsibility under this Agreement is to assist the Employer with certain Benefit Plan responsibilities as expressly assumed hereunder. Employer understands that it is Employer's responsibility to pay any fee or penalty arising from the Benefit Plans that is assessed by the Internal Revenue Service, the Department of Labor, and/or other federal or state governmental agencies.

2.2 Payments to BPAS

In consideration for the services provided by *BPAS* in accordance with this Agreement, Employer agrees to pay to *BPAS* the applicable Service Charges in accordance with Article IV of this Agreement.

Employer further represents and agrees that: (i) neither it nor any of its employees, directors, representatives, fiduciaries, Benefit Plans (or any entity performing services for Employer or such plans), any of its predecessors, successors or assigns have represented or will represent to any Covered Individual that a separate account, fund, or trust is being held on behalf of the Benefit Plans that may be used to provide or secure benefits under the Benefit Plans; (ii) except as otherwise agreed between *BPAS* and Employer, Employer shall advise the

Covered Individuals of the Benefit Plans that the benefits under the Benefit Plans shall at all times be paid out of the general assets of Employer.

2.3 Information to BPAS

Employer will furnish the information determined by *BPAS* to be necessary to satisfy its responsibilities under this Agreement in a format mutually agreed upon by the parties. Such information will be provided to *BPAS* in the time and in the method agreed to by Employer and *BPAS*. *BPAS* shall assume that all such information provided to *BPAS* by Employer, Covered Individuals, insurance companies, or a designee of Employer (e.g. another third party administrator) is complete and accurate and is under no duty to question the completeness or accuracy of such information. Employer understands that *BPAS* cannot accurately perform its duties under this Agreement without accurate and timely information and that *BPAS* shall have no liability to Employer or any Covered Individual as a consequence of inaccurate and/or untimely information provided to *BPAS* by Employer, a Covered Individual or a third party who has provided information to *BPAS* at Employer's request (e.g. a prior or existing service provider). Employer understands that an additional fee may be required if *BPAS* is required to take corrective action as a result of such inaccurate or untimely information. Employer shall make its books, records, facilities, systems and personnel relating to its obligations and performance under this Agreement available for review and audit when required by applicable laws or by State, Federal or other regulatory authorities with jurisdiction over *BPAS*.

2.4 Indemnification by Employer

Employer shall defend, indemnify and hold *BPAS* and all of its direct and indirect officers, directors, employees, agents, successors and assigns harmless from and against any and all losses, liabilities, damages (including taxes), and all related costs and expenses, including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties (collectively, "Losses") due to, arising from or relating to third party claims, demands, actions or threat of action (whether in law, equity or in an alternative proceeding) arising from or relating to the Services. The terms of this Section 2.4 do not apply to any Losses attributable to *BPAS'* gross negligence or willful misconduct.

2.5 Consent of Covered Individuals

Except as otherwise set forth in this Agreement, Employer is solely responsible for obtaining from Covered Individuals all authorizations or consents required by applicable law that are necessary to perform the Services. Employer understands and acknowledges that *BPAS* is under no obligation to obtain any authorizations or consents or to verify or confirm that Employer has obtained the appropriate authorizations or consents.

ARTICLE III. BPAS' RESPONSIBILITIES

BPAS shall make available to Employer the Services described in the Services Addendums attached hereto.

3.1 Bonding

BPAS will maintain a fidelity bond covering all *BPAS'* Employees who handle Employer and/or employee contributions provided to *BPAS* by Employer in accordance with the terms of this Agreement to the extent required by law.

3.2 No Liability for Claims and Expenses

BPAS does not insure or underwrite the Benefit Plan liability of Employer and is not financially responsible for the claims payable under and/or expenses incident to the Benefit Plans. *BPAS* has no duty or obligation to

defend any legal action or proceeding brought to recover benefits under the Benefit Plans; however, *BPAS* will provide to Employer and/or Employer's legal counsel, upon request and subject to any limitations described in this Agreement, any documentation in *BPAS*' possession that may relate to such claim for benefits and/or expenses.

3.3 Benefit Plan Documents and Forms

BPAS may provide Employer with sample documents and forms related to administration of the Benefit Plans for which *BPAS* provides related administrative services under this Agreement. Such sample documents and forms have been prepared in accordance with the standard of care set forth in Section 3.5. Nevertheless, the Employer understands and acknowledges that it is the Employer's responsibility, in accordance with Section 2.1 of this Agreement, to ensure that all Benefit Plan documents and forms, including any template or sample documents and forms provided to Employer by *BPAS* in accordance with this Agreement, comply with the applicable laws and regulations.

3.4 Recordkeeping

BPAS will maintain usual and customary records in *BPAS'* possession that relate to the Services. Nothing in this Agreement relieves Employer of any duty imposed by law or contract regarding the maintenance of records or from employing adequate audit, accounting and review practices.

3.5 Care and Diligence

BPAS shall perform the Services exercising reasonable care and diligence and in a manner that other similarly situated prudent service providers in the same industry performing the same services would exercise. *BPAS* will not be liable to Employer for actions taken in good faith. *BPAS* shall not be considered in breach of this Agreement if *BPAS* refuses to perform services generally required under this Agreement if the manner in which Employer desires such Services to be performed requires material changes to *BPAS*' existing standard operating procedures or is not in accordance with applicable law.

3.6 Non-Discretionary Duties; Additional Duties

The Services to be performed by *BPAS* under this Agreement shall be ministerial in nature and will generally be performed in accordance with the terms of the Benefit Plans established by the Employer and *BPAS'* standard operating procedures. *BPAS* and Employer may agree to additional duties by amending this Agreement in accordance with Section 6.3.

3.7 Third Party Vendors

Nothing express or implied in this Agreement prohibits *BPAS* from performing the Services itself, through an affiliate or by contracting with a third party contractor to assist *BPAS* in the performance of the Services hereunder including, without limitation, an affiliate or third party contractor located outside of the United States of America. *BPAS* may change subcontractors at any time without notice to Employer.

3.8 Customer Service and Electronic Administrative Services

To the extent set forth in the applicable Services Addendums, *BPAS* may provide certain electronic administrative services. *BPAS* shall not be deemed in default of this Agreement, nor held responsible for, any cessation, interruption or delay in the performance of its obligations to provide such services hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance, disruption of the public markets, terrorism, war or armed conflict, or the inability

to obtain sufficient materials or services required in the conduct of its business, including Internet access, or any change in or the adoption of any law, judgment or decree.

3.9 Electronic Payment Cards

BPAS may issue to Covered Individuals a debit card ("Card") to access Benefit Plan account balances in accordance with the applicable Services Addendums. Cards will be subject to an agreement between *BPAS* and the Covered Individual, *BPAS*' applicable consumer privacy policy(ies) and other Card-related materials, including instructions for Card activation. All Cards may identify *BPAS* as the issuer and shall include such other names, logos, service marks and trademarks as *BPAS* may in its sole discretion require.

3.10 Service Documentation

BPAS or a third party contractor may provide to Employer certain Service documentation related to the Services. All Service documentation is copyrighted property of *BPAS* or its third party contractors. Employer shall not reproduce, modify, edit or otherwise change the Service documentation without the prior written consent of *BPAS* unless the foregoing rights are provided for within the applicable Service documentation. Any Service documentation provided to Employer in electronic format shall be accompanied by a non-exclusive license solely to reproduce such materials in electronic or paper form; provided, however, that such reproductions shall not be modified, edited, or otherwise changed in any manner without *BPAS*' prior written consent.

3.11 Online Services

BPAS and/or its third party contractors will provide a website(s) for use in connection with the Services, all as may be further described in the applicable Services Addendums or Service documentation.

3.12 Call Center

BPAS will make available to Employer and Covered Individuals a live telephone-based support system in accordance with the applicable Service documentation.

3.13 BPAS Liability

BPAS' liability to Employer shall be solely for actual damages incurred by Employer as a direct result of *BPAS'* breach of its standard of care in providing any Service as set forth in this Agreement. *BPAS* is not liable for any indirect, consequential, exemplary, punitive or special damage, loss, cost or expense of any type of nature including, without limitation, loss of business, profits, goodwill, anticipated savings or the loss or corruption of data, regardless of the form of the action or theory of recovery, and even if *BPAS* has been advised of the possibility of any of the foregoing. *BPAS* will not be liable for any action or non-action taken or not taken as the case may be in connection with Employer's instructions (whether written, oral or otherwise).

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE MAXIMUM TOTAL LIABILITY OF *BPAS* SHALL BE LIMITED TO DIRECT MONEY DAMAGES IN A TOTAL AGGREGATE AMOUNT NOT TO EXCEED THE AMOUNT PAID FOR SERVICES (AS DEFINED UNDER THIS AGREEMENT) DURING THE 12 MONTH PERIOD PRECEDING THE DATE THAT [*BPAS*] IS NOTIFIED OF A DEFECTIVE SERVICE.

ARTICLE IV. COMPENSATION

4.1 Service Charges

The applicable charges for the Services performed by BPAS in accordance with this Agreement are described

below ("Service Charges"). *BPAS* may revise the Service Charges for any reason provided that written notice of such changes is provided at least 30 days in advance. Such revised Service Charges will be effective no earlier than 30 days after written notice of such revisions is provided to Employer. Service charges shall be assessed for any month during which Services are performed. Interest and penalties may be imposed on overdue Service Charges in accordance with Section 4.2 herein.

The Employer agrees to pay *BPAS* a monthly administrative fee commencing on the Effective Date set forth in Section 1.1 above.

The monthly Service Charge shall be determined in accordance with the following schedule:

One or Both Health or Dependent Care FSA Accounts	\$3.80 per participant per month			
(Includes debit card with all Health Care FSA Accounts)				
Premium Only Accounts	\$3.80 per participant per month			
Annual Renewal Fee	\$250.00			
Printing/Shipping Costs:	Actual costs			

Employer agrees that in the event the Effective Date is postponed for any reason after execution of this Agreement and any work has been commenced by *BPAS* pursuant to this Agreement, such time and expense charges described in this paragraph shall be paid by Employer upon submission of an invoice by *BPAS* for such services rendered.

Any services which are in addition to those described herein will be billed to the Employer by *BPAS* at its current fee hour rate plus actual expenses. Such additional services will include, but are not limited to, any amendments to plan documents or the summary plan description resulting from changes in applicable law or regulation governing the Plan or any benefit provided thereunder.

4.2 Payment of Charges

Employer will pay to *BPAS* the fees incurred by electronic funds transfer by the fifteenth day of the month following the month in which the services were provided and billed. *BPAS* may apply an interest rate of one and one-half percent per month to all overdue amounts. In the event any fees due to *BPAS* are overdue, Employer will reimburse *BPAS* for any reasonable costs incurred in recovering such fees, including legal costs and Employer agrees to allow *BPAS* to automatically debit Service Charges from the Employer's designated account to cover Service Charges that have not been paid within 60 days. *BPAS* may also terminate the Agreement in accordance with Section 6.8 herein.

4.3 Third Party Compensation

As set forth herein and in the Addendums, Employer understands and agrees that *BPAS* may receive compensation from third parties related to certain Services that it may provide hereunder. Such compensation may include commissions with respect to insurance coverage purchased by Employees; interchange revenue related to the use of electronic payment cards for Health Flexible Spending Accounts, Health Reimbursement Arrangements and/or Qualified Transportation Accounts related transactions. Although these amounts are not paid directly by Employer, this compensation is in addition to other payments Employer makes to *BPAS* for the administrative and other services described herein.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties

Employer represents and warrants that: (a) it has all requisite legal and corporate power to execute and deliver this Agreement and other necessary documentation, (b) it has taken all corporate action necessary for the authorization, execution and delivery of this Agreement and other necessary documentation, (c) it has no agreement or understanding with any third party that interferes with or will interfere with its performance under this Agreement, (d) it has obtained and will maintain all rights, approvals and consents necessary to perform its obligations under this Agreement and other necessary documentation, (e) its performance of its obligations under this Agreement will not violate any law, rule, regulation, judgment, decree or order applicable to Employer, and (f) it has taken all action required to make this Agreement a legal, valid and binding obligation of Employer, enforceable in accordance with its terms.

5.2 Disclaimer

EXCEPT AS SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS AND WARRANTIES WHETHER EXPRESS, STATUTORY OR IMPLIED INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE VI. GENERAL PROVISIONS

6.1 Entire Agreement; Severability; Headings

This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement will affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement. If a court declares any term of this Agreement invalid, the same will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The headings of sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

6.2 Compliance; Non-Waiver

Failure by Employer or *BPAS* to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions of Section 6.3.

6.3 Assignment; Amendment

BPAS may assign this Agreement or any of its rights and duties hereunder without prior notice to or consent by Employer. Employer may not assign this Agreement or any of its rights or duties hereunder to any person without BPAS' prior written consent. This Agreement and its Addendums may be amended by written agreement signed by both parties. An amendment made by BPAS to this Agreement shall be deemed signed and adopted by the Employer unless the Employer responds within 30 days of the date that they are notified of the amendment.

6.4 Audits

Employer may perform no more than one (1) audit of the records specifically related to performance of the parties under this Agreement each year, subject to reasonable prior written notice to *BPAS*. Audits must be performed during normal working hours. An employee or an agent of Employer may perform audits provided such employee or agent signs an acceptable confidentiality agreement. Each party agrees to provide reasonable assistance and information to the auditors. Employer acknowledges and agrees that if it requests an audit, it will reimburse *BPAS* for *BPAS*' reasonable expenses, including copying and labor costs, in assisting Employer to perform the audit. Each party also agrees to provide such additional information and reports, as the other party will reasonably request.

6.5 Non-Disclosure of Proprietary Information

Employer and BPAS each acknowledge that as a result of entering into this Agreement, each party has and will continue to reveal and disclose to the other information that is proprietary and/or confidential of such party. Employer and BPAS agree that each party will; (a) keep such proprietary and/or confidential information of the other party in strict confidence; (b) not disclose confidential information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and (c) will not use confidential information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement and Addendums (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure). For purposes of this Section, confidential information is any information identified as confidential and/or proprietary (or words of similar import); including but not limited to the parties' respective businesses or finances. The terms and conditions of this Section 6.5 shall survive the termination of this Agreement. Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under the Agreement and Addendums shall not be considered confidential information for purposes hereof; (a) if, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or (b) if the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party. It shall not be considered a breach of this Agreement if BPAS discloses any information obtained in the course of performing its duties under the Agreement and Addendums as required by applicable law.

6.6 Disclosure of Individually Identifiable Health Information

As applicable to the services being provided, both parties agree to the additional limitations and conditions set forth in Business Associate Agreement Addendum with respect to Covered Individuals' personal identifiable health information created or received by *BPAS* in the course of performing its obligations under the Agreement with respect to the Benefit Plans. If there is a conflict between this Agreement and the Business Associate Agreement Addendum, the Business Associate Agreement Addendum will control but only with respect to the subject matter of the Business Associate Agreement Addendum.

6.7 Notices and Communications

All notices between Employer and *BPAS* provided for herein shall be sent by confirmed facsimile; by guaranteed overnight mail, with tracing capability; by first class United States mail, with postage prepaid; or by email addressed to the other party at their respective addresses. All notices shall be deemed provided when sent except as otherwise set forth in this Agreement. Employer further agrees that *BPAS* may communicate confidential, protected, privileged or otherwise sensitive information to Employer through a named contact designated by Employer ("Contact Information") and specifically agrees to indemnify *BPAS* and hold it harmless:

for any such communications directed to Employer through the Contact Information attempted via facsimile, mail, telephone, e-mail or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted.

6.8 Termination of Agreement

This agreement will continue in effect and will be automatically renewable each month until either party hereby notifies the other party in writing of the termination of this Agreement. This Agreement may be terminated as follows:

- (a) Either party may deliver notice of termination of this Agreement in writing at least thirty (30) days before the date the Agreement is being terminated. In the event the Employer terminates this Agreement, fees agreed to above will be remitted to *BPAS* up to the date administrative services under this Agreement terminate.
- (b) *BPAS* may terminate any or all Services, in whole or in part, if Employer materially breaches the terms of this Agreement or any Services Addendum and does not cure that material breach within thirty (30) days after receipt of *BPAS'* notice.
- (c) Employer may terminate a Services Addendum if *BPAS* materially breaches its obligations under that Services Addendum and does not cure that material breach within thirty (30) days after receipt of Employer's notice.
- (d) Each party may also terminate a Service as set forth in the Services Addendum applicable to such Service.
- (e) This Agreement shall terminate automatically with respect to any Benefit Plan Service as of the date the underlying Benefit Plan is terminated.
- (f) BPAS may terminate any or all Services, in whole or in part, for cause as of the date specified in a termination notice if Employer: (i) files for bankruptcy, (ii) becomes or is declared insolvent, (iii) is the subject of any proceedings (not dismissed within 30 days) related to its liquidation, insolvency or the appointment of a receiver or similar officer, (iv) makes an assignment for the benefit of all or substantially all of its creditors, (v) takes any corporate action for its winding-up, dissolution or administration, (vi) enters into an agreement for the extension or readjustment of substantially all of its obligations, or (vii) recklessly or intentionally makes any material misstatement as to its financial condition.
- (g) Termination of this Agreement (including Addendums) shall not terminate the rights or obligations of either party arising prior to the effective date of such termination. The indemnity, confidentiality and privacy provisions of this Agreement shall survive its termination.

6.9 Interpretations

The parties hereto acknowledge and agree that both (i) the rule of construction to the effect that any ambiguities are resolved against the drafting party; and (ii) the terms and provisions of this Agreement, will be construed fairly as to all parties hereto and not in favor of or against a party, regardless of which party was generally responsible for the preparation of this Agreement.

6.10 Governing Law and Dispute Resolution

This Agreement will be governed by and construed in accordance with the applicable laws of Texas, without giving effect to the principles of that state relating to conflicts of laws. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of the State or Federal court in the state of Texas, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts in Texas, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party. Notwithstanding the foregoing, claims for equitable relief may be brought in any court with proper jurisdiction within the United States.

Both parties agree to waive any right to have a jury participate in the resolution of the dispute or claim, whether sounding in contract, tort or otherwise, between the parties arising out of, connected with, related to or incidental to this Agreement.

6.11 No Third Party Beneficiaries

No third party will be deemed to be an intended or unintended third party beneficiary of this Agreement and nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any other person or entity other than Employer, *BPAS* and their respective successors and permitted assigns, any rights, remedies or obligations whatsoever. *BPAS* is obligated under this Agreement only to the Employer, and nothing under this Agreement shall be deemed to confer any obligation on *BPAS* to any Covered Individuals.

ADDENDUM A

BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement ("Agreement") supplements and is made a part of the Administrative Service Agreement ("Service Agreement") by and between BPAS ("Business Associate") and Client Name ("Employer") acting on behalf of Client Name's Health Flexible Spending Account Plan ("Covered Entity"), and is effective as of September 1, 2013 (the "Effective Date"). This Agreement supersedes any prior HIPAA business associate agreement between the parties.

RECITALS

WHEREAS, Business Associate provides third party administration services to employers sponsoring health flexible spending account plans; and

WHEREAS, Business Associate has been retained by Employer to perform functions or activities that require that Business Associate have access to Protected Health Information in relation to the Covered Entity; and

WHEREAS, Business Associate and Employer desire to amend and restate the Agreement currently in effect in order to incorporate the changes to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as set forth in the final regulations issued by the Department of Health and Human Services on January 25, 2013 implementing the Health Information Technology for Economic and Clinical Health Act ("HITECH") provisions of the American Recovery and Reinvestment Act of 2009; and

WHEREAS, the parties agree that Business Associate acts in the capacity of an independent contractor in relation to the services provided to Employer and Covered Entity under the Service Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

DEFINITIONS

Terms used but not otherwise defined in the Agreement shall have the same meaning as those terms in the Privacy Rule and Security Rule.

- (a) **"Breach"** shall have the meaning given to it by 45 CFR Section 164.402.
- (b) **"Business Associate"** shall mean BPAS, a third party administrator licensed under the State of Texas with offices located in Houston, Harris County, Texas.
- (c) **"Covered Entity"** shall mean the Client Name Health Flexible Spending Account Plan. Client Name serves as plan sponsor of this plan.
- (d) **"De-identified Data"** shall have the same meaning as the term "de-identified data" in 45 CFR Section 164.514.
- (e) **"Designated Record Set"** shall mean a group of records maintained by or for a Covered Entity that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole

or in part, by or for the Covered Entity to make decisions about Individuals. For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for a Covered Entity.

- (f) **"Health Care Operations"** shall have the same meaning as the term "Health Care Operations" in 45 CFR Section 164.501.
- (g) **"HITECH ACT"** shall mean the provisions of Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009. Any reference to the HITECH Act shall also include any related regulations issued by the Department of Health and Human Services.
- (h) "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).
- (i) **"Privacy Rule"** shall mean the Standards for Privacy of Individually Identifiable Health Information that is codified at 45 CFR Parts 160 and 164, subparts A and E.
- (j) "Protected Health Information" or "PHI" shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under 45 CFR Section 160.103. Protected Health Information shall be limited to the information created or received by Business Associate from or on behalf of Employer.
- (k) **"Required By Law"** shall have the same meaning as the term "required bylaw" in 45 CFR Section 164.103.
- (I) **"Secretary"** shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- (m) **"Security Rule"** shall mean the Security Standards for the Protection of Electronic Protected Health Information under HIPAA that is codified at 45 CFR Parts 160 and 164, subparts A and C.
- (n) "Unsecured PHI" shall mean Protected Health Information that is not secured through the use of a technology or methodology that renders such Protected Health Information unusable, unreadable or indecipherable to unauthorized individuals, as specified in guidance issued pursuant to Section 13402(h) of the HITECH Act, including the Breach Notification Rule.

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

(a) Permitted Uses and Disclosures. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required By Law. Business Associate recognizes that the Protected Health Information is and shall remain the Covered Entity's property except as set forth in the Service Agreement. Business Associate agrees that it acquires no title or rights to the Protected Health Information as a result of this Agreement.

To the extent required by the Privacy Rule, Business Associate shall only request, use and/or disclose the minimum amount of Protected Health Information necessary to accomplish the purpose of the request, use and/or disclosure. The determination of what constitutes the minimum necessary amount of Protected Health Information shall be determined in accordance with the provisions of the Privacy Rule, as amended by Section 13405(b) of the HITECH Act.

Business Associate shall not use or disclose Protected Health Information that is genetic information for underwriting purposes, as set forth in the regulations issued pursuant to Section 105 of the Genetic Nondiscrimination Act of 2008. Business Associate will comply with all provisions of GINA as are applicable to Covered Entity.

- (b) Safeguards. Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Protected Health Information, in electronic or any other form, that it creates, receives, maintains or transmits under this Agreement, in accordance with the Privacy Rule and the Security Rule to prevent the use or disclosure of Protected Health Information other than as provided for by this Agreement. Business Associate shall fully comply with the Security Rule with regard to electronic Protected Health Information.
- (c) Reporting of Improper Use or Disclosure. Business Associate agrees to report to Covered Entity of the discovery of any use or disclosure of Protected Health Information not provided for by this Agreement of which it becomes aware, including a Breach of Unsecured Protected Health Information as required by 45 CFR 164.410. Business Associate shall also report any Security Incident of which it becomes aware to Covered Entity. The term "Security Incident" shall not include inconsequential incidents that occur on a daily basis, such as scans, "pings" or other unsuccessful attempts to penetrate computer networks or servers containing electronic Protected Health Information.
- (d) **Mitigation.** 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.
- (e) Agents and Subcontractors. Business Associate agrees to require that any agents or subcontractors that create, receive, maintain or transmit Protected Health Information on behalf of Business Associate in relation to Covered Entity agree in writing (in the form of a business associate contract) to at least as restrictive conditions and requirements that apply through this Agreement to Business Associate with respect to such information, including the implementation of reasonable and appropriate measures for safeguarding Protected Health Information.
- (f) Access to Individuals. Business Associate agrees to provide access to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR Section 164.524. Further, if an Individual requests a copy of Protected Health Information in a specific electronic format,

Business Associate shall comply with such request, if readily producible, in accordance with the requirements of 45 CFR Section 164.524.

- (g) Amendments to Protected Health Information. Business Associate agrees to make any reasonable amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR Section 164.526 at the request of Covered Entity or an Individual.
- (h) Access by Covered Entity. Business Associate agrees to make internal practices, books and records including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with HIPAA.
- (i) Disclosure Documentation. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Section 164.528. Business Associate agrees to provide to Covered Entity or an Individual information collected in accordance with this subsection to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Section 164.528.
- (j) Training. Business Associate agrees to train its employees who handle Covered Entity's Protected Health Information about the Business Associate's obligations and permitted uses and disclosures under this Agreement.
- (k) Compliance with the HITECH Act. To the extent not already referenced in this Agreement, the requirements applicable to Business Associate under the HITECH Act are hereby incorporated by reference into the Agreement. Business Associate agrees to comply, as of the applicable effective dates of each such HIPAA obligation under the HITECH Act applicable to Business Associate, with the requirements imposed by the HITECH Act, including any applicable guidance issued by the Department of Health and Human Services relating to the HITECH Act and HIPAA.
- (I) Delegated Obligations. To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

PERMITTED USES BY BUSINESS ASSOCIATE

- (a) Service Agreement. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
- (b) **Other Permitted Usage.** Except as otherwise limited in this Agreement, Business Associate may

use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. In addition, Business Associate may use Protected Health Information to provide Data Aggregation services as permitted by 45 CFR Section 164.504(e)(2)(i)(B).

OBLIGATIONS OF COVERED ENTITY

- (a) Change in Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR Section 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information. Additionally, Covered Entity shall notify Business Associate of any limitation(s) or restriction(s) in its security practices to the extent that such limitation may affect Business Associate's use or disclosure of Protected Business Associate's use or disclosure of Protected Business Associate's use or disclosure of Protected Health Information.
- (b) **Change in Right to Use Protected Health Information.** Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use and disclosure of Protected Health Information.
- (c) **Change in Restrictions Regarding Protected Health Information** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information. Business Associate will implement a similar restriction provided such restriction is reasonable and does not impact its ability to perform under the Service Agreement.
- (d) **Covered Entity Representative.** Covered Entity shall notify Business Associate of those employees of Covered Entity who are authorized to receive Protected Health Information from Business Associate.

PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

TERM AND TERMINATION

- (a) **Term.** This Agreement will begin on the Effective Date, and will continue until terminated with this Section 6 of the Agreement.
- (b) Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall provide not less than 20 days written notice of its intent to terminate the Agreement if Business Associate does not cure such material breach no later than the end of the written notice period. If Business Associate does not cure the breach within such time, then Covered Entity may, in its sole discretion, immediately terminate this Agreement.
- (c) **Termination without Cause and Termination of the Service Agreement.** Either party may

terminate this Agreement effective upon 30 days advance written notice to the other party given with or without any reason if Business Associate no longer performs services for Covered Entity requiring the use or disclosure of protected health information. This Agreement will immediately terminate if the Service Agreement terminates. The effective date of such termination will be the same as the effective date that the Service Agreement terminates.

- (d) Effect of Termination. Except as provided in the next paragraph, upon termination of this Agreement for any reason, Business Associate shall return or, with the Covered Entity's permission, destroy all Protected Health information received from the Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of the Protected Health Information, except in cases of actual or threatened litigation or if required by law. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.
- (e) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Business Associate's determination that return or destruction of Protected Health Information is infeasible, 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 purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

MISCELLANEOUS

- (a) **Regulatory References.** Any reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.
- (b) **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule, the Security Rule or the HITECH Act.
- (c) **Survival.** The respective rights and obligations of Business Associate under Section 6(d) shall survive the termination of this Agreement.
- (d) Interpretation; Conflict. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, the Security Rule or the HITECH Act. In addition, to the extent this Agreement, only as it relates to the Privacy Rule, Security Rule, the HITECH Act and Protected Health Information, is inconsistent with the terms of the Service Agreement, the terms of this Agreement shall govern. To the extent the Service Agreement conflicts with the terms of this Agreement unrelated to the Privacy Rule, Security Rule, the HITECH Act and Protected Health Information, the terms of the Service Agreement shall govern. All terms of the Service Agreement not in conflict with this Agreement remain in full force and effect.
- (e) **No Third-Party Beneficiaries.** Except as expressly provided for in the Privacy Rule, this Agreement is entered into by and among the parties hereto solely for their benefit. The parties have not created or established any third-party beneficiary status or rights in any person or

entity not a party hereto including, but not limited to, any individual, provider, subcontractor, or other third-party, and no such third-party will have any right to enforce any right or enjoy any benefit created or established under this Agreement.

- (f) **Force Majeure.** The obligations of any party 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 governmental action. The party claiming suspension under this Section will take reasonable steps to resume performance as soon as possible without incurring unreasonably excessive costs.
- (g) Entire Agreement; Amendments; Facsimile. This Agreement including any riders, attachments or amendments hereto, constitutes the entire agreement among the parties with respect to the Privacy Rule, the Security Rule and the HITECH Act. This Agreement supersedes any prior agreement or understandings pertaining to HIPAA obligations between the parties, whether oral or written, and may be amended only by a writing executed by authorized representatives of both parties. A facsimile or other reproductive type copy of this Agreement, so long as signed by all parties, will be considered an original and will be fully enforceable against all parties.
- (h) **Choice of Law.** This Agreement is made in and will be governed by, and construed in accordance with, the laws of the State set forth in the Service Agreement without regard to principles of conflict or choice of law.
- (i) **Assignment and Delegation.** No party may assign its rights or duties under this Agreement without the prior written consent of the other. This Agreement is binding upon and will inure to the benefit of the respective parties hereto and their successors and permitted assigns.
- (j) **Headings.** All headings are for convenience only and may not be deemed to limit, define or restrict the meaning or contents of the Sections.
- (k) Unenforceable Provisions. If any provision of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in effect and the illegal or unenforceable provision will be modified so as to conform to the original intent of this Agreement to the greatest extent legally permissible. Notwithstanding the foregoing, if any such modification causes a material change in the obligations or rights of any party, upon written notice from one parry to the other of the adverse effect thereof upon such notifying party, and then if the parties are not able to mutually agree as to an amendment hereto, any party may terminate this Agreement upon 30 days written notice to the other parties.
- (I) Notices. Any notice required pursuant to this Agreement, except for notification required pursuant to Section 2.c, must be in writing and sent by registered or certified mail, return receipt requested, or by a nationally recognized private overnight carrier with proof of delivery, to the addresses of the parties set forth below in this Agreement. The date of notice will be the date on which the recipient receives notice or refuses delivery. All notices must be addressed as follows or to such other address as a party may identify in a notice to the other party:

To Business Associate:	BPAS 820 Gessner Suite 1225 Houston, TX 77024
To Covered Entity:	Houston Baptist University 7502 Fondren Road Houston, TX 77074

- (m) Waiver. A waiver of a breach or default under this Agreement is not a waiver of any other or subsequent breach or default. A failure or delay in enforcing compliance with any term or condition of this Agreement does not constitute a waiver of such term or condition unless it is expressly waived in writing.
- (n) **Negotiated Agreement.** Each party acknowledges that this Agreement resulted from negotiations by and among all parties, and therefore any rule of construction requiring ambiguities to be construed against the drafter of an agreement will not apply to any provision of this Agreement.

ADDENDUM B

BENNY[™] PREPAID BENEFITS CARD

This Addendum is made a part of and incorporated by reference into the *BPAS* Administrative Service Agreement.

The Employer has established a Health Flexible Spending Account, Health Reimbursement Arrangement, Health Savings Account program and/or a Qualified Transportation Account ("Plan") to allow participants to be reimbursed for eligible Plan expenses. Employer, by execution of the Administrative Service Agreement with *BPAS* and providing debit cards to Participants in the Plan for claims payment, agrees to be bound by the terms and conditions described in this Addendum B and acknowledges that Employer has read, understands, and agrees with the terms, conditions, and liabilities described in the Account Holder Agreement provided by Evolution Benefits to each holder of such debit card, hereinafter referred to as the Benny[™] Prepaid Benefits Card.

DEFINITIONS

<u>Account</u> is the Employer-owned bank account from which reimbursements are made.

<u>Card</u> means the Benny Prepared Benefits Card provided by Evolution Benefits.

<u>Benefit Plan Participants or Participants</u> means employees and their dependents that are participating in the Plan.

<u>Card Transaction</u> means when the debit card is presented for payment of Eligible Expenses.

<u>Eligible Expenses</u> include any and all expenses that are eligible for reimbursement under the applicable portion of the Plan as determined in accordance with the applicable section of the Internal Revenue Code (the "Code").

<u>Employee</u> means those employees eligible to participate in the Plan.

Employer means Client Name.

Flexible Spending Account ("FSA") means a health flexible spending account, as provided through the FSA Plan

<u>Health Reimbursement Arrangement ("HRA")</u> means an account as provided through the HRA Plan.

<u>Health Savings Account ("HSA")</u> means a health savings account established under Section 223 of the Internal Revenue Code by or on behalf of an Employee.

<u>Qualified Transportation Account ("QTA")</u> means Transit Spending Account and/or Parking Spending Account Plan.

<u>HIPAA</u> means the Health Insurance Portability and Accountability Act as it pertains to the privacy of medical information.

<u>Deposit Account</u> means the bank account to which the Employer is required to deposit funds for the purpose of funding the debit card transactions.

Minimum Balance means the minimum dollar amount the Employer agrees to maintain in the Deposit Account

for the purpose of funding the debit card transactions. The calculation includes only those contributions associated with debit card holders and shall be calculated as follows: the annual account contributions in the current plan year for the applicable benefit(s), multiplied by 5%. This amount will be recalculated each year after the beginning of each plan year.

<u>Evolution Benefits Program</u> means an employee benefits payment card Program utilizing the electronic flex card adjudication system and providing electronic payment and, if applicable, adjudication of claims under Sections 105, 125, 129, 132, 213 and 223 of the United States Internal Revenue Code of 1986, as amended, and such other sections governing the same subject matter that are, or may become applicable due to legislative or regulatory changes.

OBLIGATIONS AND RESPONSIBILITIES OF EMPLOYER

- (a) Employer understands and acknowledges that any and all data or information necessary to provide the Evolution Benefits Program will reside on servers owned by *BPAS* or operated on behalf of *BPAS'* service providers.
- (b) Employer hereby grants to BPAS and its service providers the right to receive, process, and perform services with all information and data that is submitted to BPAS in order for BPAS to provide required information for the Evolution Benefits Program. Employer further grants to BPAS and its service providers the right to produce and use aggregate and statistical data from such information as permitted by HIPAA.
- (c) Employer will pre-fund a Deposit Account established by *BPAS* or its service provider with the Minimum Balance described above.
- (d) Employer understands and agrees that the cost of any and all reimbursement transactions incurred by BPAS arising under the Evolution Benefits Program will be paid to BPAS by Employer. In no event will BPAS be liable for any such payments. In the event a Benny™ Prepaid Benefits Card is used for an ineligible expense, Employer will credit the Deposit Account and use its best efforts to recover the funds from the plan participant. Employer will bear the loss of any uncollectible amounts from plan participants.
- (e) Employer will pay *BPAS* the applicable administrative fees according to the fee schedule set forth in the Administrative Services Agreement, which may be amended by written agreement between the parties.
- (f) Employer hereby grants to BPAS and its service provider a non-exclusive, non-transferable, royalty-free license to use Employer's trademarks in connection with the Evolution Benefits Program, in the forms and formats approved by Employer on (a) Benny[™] Prepaid Benefits Cards, (b) periodic statements, and (c) other communications to Plan participants with respect to the accounts. Employer agrees that the name of the financial institution which issues the Benny[™] Prepaid Benefits Cards, a website Uniform Resource Locator and a customer service phone number will be printed on all Benny[™] Prepaid Benefits Cards.
- (g) Employer will use best efforts to enforce compliance with proper use of the Benny[™] Prepaid Benefits Card by Plan Participants. Employer will take all action necessary to investigate and resolve errors in Card Transactions asserted by Plan Participants, inform *BPAS* of any known errors, and the Employer will be required to credit Plan Participant's accounts in accordance

with applicable law. In the event a Benny[™] Prepaid Benefits Card is reported lost or stolen, Employer will immediately inform *BPAS* and instruct them to cancel access to the corresponding Account. Employer will notify *BPAS* immediately of any suspected or confirmed inappropriate unauthorized or fraudulent use of a Benny[™] Prepaid Benefits Card.

- (h) Employer acknowledges that Card usage for certain portions of the Plan is subject to the IRS Card Guidance, which may include, without limitation, restrictions on the amount a Participant may charge, which merchants may accept the Card, and the type of expense that may be charged and other legal requirements. Employer acknowledges that, despite such usage restrictions imposed by the IRS, the Card may cause payments to be issued for expenses that do not represent eligible Plan expenses. Employer agrees *BPAS* may not be held responsible for Employer losses or any tax consequences due to payments for ineligible expenses. Employer acknowledges that state or other laws may govern whether and to what extent it may recoup ineligible payments by withholding such amounts from Employee pay.
- (i) Employer agrees to provide to *BPAS* in a timely fashion all information for any reports or other documents required by law, including but not limited to the rules and regulations promulgated by the U.S. Department of Labor and the Internal Revenue Service. It is the Employer's responsibility to ensure that it complies will all applicable tax and other laws.

BPAS RESPONSIBILITIES

- (a) BPAS shall provide administrative services to employer on behalf of Participants, including updating Participant's records, maintaining accurate Account balances, and contribution information, activating and deactivating Participant Cards, responding to Participant inquiries and providing appropriate notices regarding Participants and actions taken in relation thereto.
- (b) BPAS shall provide administrative services to Employer, including maintaining accurate Account balance information, providing reports of Account activities and initiating draws (either directly or through its authorized agent) against an Account designated by the Employer to fund reimbursement transactions and maintain Account balances at the agreed-upon levels.
- (c) BPAS will provide call center support, subject to its standard hours of operation, for Participants to report lost or stolen Cards, and resolve all servicing issues related to the Card, except transaction or merchant disputes.
- (d) *BPAS* will make available to the Employer, for distribution to the Participants, information concerning proper use of the Card.
- (e) BPAS will use its best efforts to operate (and to cause the card processor to operate) the Electronic Payment Card Program (the "Card Program") in accordance with any IRS guidance applicable to debit card processing of Eligible Expenses, such as Revenue Ruling 2003-43, IRS Notice 2006-69, and IRS Notice 2007-02 and any applicable IRS regulations or additional guidance published by the IRS (collectively "IRS Card Guidance"). BPAS shall not be responsible for debit card processing that is conducted at the direction of the Employer or in accordance with card processor's standard procedures. If either Employer or BPAS has concerns that the card processor is not operating in accordance with IRS Guidance, either party may terminate this Agreement without penalty upon 30 days notice.

ADMINISTRATION

BPAS will administer the Card as follows:

- (a) The Card service provider chosen by *BPAS* will provide a set of two (2) Cards to each Employee participating in the Plan.
- (b) *BPAS* will make available online to each *Participant* reimbursement forms and instructions for filing reimbursement Claims; and
- (c) *BPAS* will make available to each Participant via a website, Card activities; and receive electronic and/or paper Claims, and expeditiously review such Claims to determine what amount, if any is due and payable with respect thereto; and
- (d) *BPAS* will disburse the benefit payments it determines to be due (provided the Employer has sufficient funds in the Account) in accordance with the provisions of the FSA, HRA, HSA and/or QTA and the following procedure(s):
- Valid reimbursement for benefits shall be paid by authorizing a valid Card Transaction at point of sale, or by mailing a check to the Participants at their address (unless requested by the Employer as allowed by the terms of the Plan) or by initiating a direct deposit transfer directly to the Participants in their respective bank accounts in the appropriate amount(s); and
- (ii) Card Transactions that have been authorized, but subsequently found to be ineligible shall be offset with valid paper Claims; or
- (iii) Card Transaction deemed ineligible shall be reimbursed by the Employee or deducted by the Employer via payroll system, or included in the Employee's tax income by the Employer.
- (e) *BPAS* agrees to reasonably ensure compliance with proper use of the Card and take whatever action is necessary to investigate and resolve errors in Card Transactions.
- (f) The Card will be deactivated upon notice from the Employer that the Participant is no longer employed by the Employer or has ceased to satisfy the eligible requirements of the Plan. Where Employer instructs *BPAS* to terminate eligibility, *BPAS* agrees to deactivate, as soon as practicable, but in no event more than three (3) business days of its actual receipt of a complete notice thereof, the Card of any Ineligible Person. If *BPAS* has deactivated the Card pursuant to the preceding sentence, Employer agrees that *BPAS* or the Card Service Provider may not be held responsible for all such ineligible expenses incurred after the employee terminates and prior to *BPAS'* receipt of notice from the Employer. Employer will use its best efforts to retrieve the Card from any Ineligible Person. *BPAS* may deactivate at its option and without prior notice to Employer or Participant, any Card for fraudulent activity or as outlined in the Cardholder Agreement. *BPAS* reserves the right to deactivate the Card any other time that it deems appropriate.
- (g) Participants must agree to use the Card in accordance with the terms of the Cardholder Agreement that accompanies the Card. *BPAS* or the Card services provider will deactivate the portion of the Card that corresponds with the applicable Plan if the Participant fails to use the Card in accordance with the

Cardholder Agreement.

- (h) The Card may be used by Participants to pay for Eligible Expenses with merchants who have a category code associate with medical services (to the extent applicable). BPAS reserves the right to allow the Card to be used at merchants who do not have an appropriate category code provided such transactions are permissible under the IRS Card Guidance. BPAS will use its best efforts to ensure that the Card complies with IRS requirements; however, BPAS shall not be responsible for Card systems procedures established by the Card processor or directed by the Employer.
- (i) BPAS will require substantiation of expenses paid with the Card if required under and in accordance with the requirements set forth in the applicable Treasury regulations and/or other applicable guidance. BPAS will notify claimants in writing as to any electronic or paper claims that are denied or deemed ineligible for reimbursement because of inadequate claim substantiation, improper claim form submission, or expense not meeting Plan requirements. The Card will be deactivated if the Participant fails to provide the requested substantiation. BPAS will make reasonable attempts to collect repayment of claims paid through the Card for ineligible expenses or offset the ineligible payment against any claims for future eligible expenses (made during the plan year where required). No more than three (3) requests for repayment will be made. If repayment or offset is not made, Employer will be informed and will be responsible for taking any necessary action required by law. Employer agrees to recover the funds from the Participant through an after-tax payroll deduction and send notice of the deducted funds to BPAS for credit to the Participant's Account.
- (j) BPAS or the Card service provider will incur no liability for ineligible Card Payments that may be made consistent with the provisions of this Agreement (e.g., at Employer's direction or pursuant to the card processor's procedures). It is the Employer's responsibility to ensure that it complies with all applicable tax and other laws.
- (k) All Cards will be deactivated on the date this Agreement is terminated. *BPAS* has the right to deactivate all Cards in the event the Employer fails to fund the Account as provided in Section 3 above. *BPAS* may also elect to terminate the Agreement as of such date.
- (I) If a Card has been deactivated (other than for failure to properly fund), neither *BPAS* nor the Card service provider will reactivate the Card, until *BPAS* has reasonably determined that the reason for the deactivation has been resolved or promoted by written instructions from the Employer.

TRANSFER OF DATA

BPAS will establish a standard procedure for exchanging information. Employer will furnish the information determined to be necessary to satisfy its responsibilities under this Card Service Addendum in a format, method, and time mutually agreed upon by the parties. *BPAS* may exchange eligibility and adjudication data with the pharmacy benefits manager. Also, *BPAS* may interface with the Card processor on all Card activity and post data to system file.

IN WITNESS WHEREOF, Employer and *BPAS* have caused this Agreement and Addendum to be executed in their names by their undersigned officers, the same being duly authorized to do so.

BPAS

A willbrield demo

Signature

James Goodwin Printed Name

Senior Vice President, VEBA/HRA Services Title

October 13, 2015 Date

HOUSTON BAPTIST UNIVERSITY

Signature

Printed Name

Title

Date