



**BUSINESS OF THE CITY COUNCIL
AGENDA STATEMENT**

Item No. 11
For Meeting of 01/21/2016

ITEM TITLE: A Resolution Approving a Continuation of Coverage Administration Agreement between the City of Norwalk, and Kabel Business Services.

CONTACT PERSON: Jodi Eddleman, City Clerk

BACKGROUND: The City of Norwalk has administrated the COBRA policy to employees in the past. However, because of strict rules and regulations the City has asked Kabel Business Services to administer that service to former employees of the City.

DESCRIPTION:

Kabel Business Services is a Third Party Administrator (TPA) that provides outsourcing solutions for a wide range of employee benefits programs. We have been serving our clients for over 20 years, providing peace of mind and compliance assurance to our valued customers. The cost would be as follows.

One Time Set up Fee (based on a single location) \$75.00

Includes:

- Initial establishment of the Plan on our software
- Initial mailing of General Rights Notices to all covered employees

Annual Renewal Fee \$70.00

Applied to each Plan renewal invoice, beginning with your second Plan Year

Includes:

- Adjustments to rate tables for all covered health plans
- Delivery of open-enrollment forms with complete instructions to any former employee on COBRA

Administration Fee (per Benefit Enrolled Participant, per month) \$1.25

Monthly Minimum Administration Fee \$50.00

Includes:

- Mail Qualifying Event Notifications to Qualified Beneficiaries
- Mail General Rights Notices to newly hired covered employees
- Process and Adjudicate COBRA Elections
- Process Monthly Premium Collections
- Issue monthly insurance premium payment to Employers
- Toll-free Employer and Qualified Beneficiary support and consultation

Qualified Beneficiary Takeover Fee (One-time charge per participant) **\$35.00**

Includes:

- Audit/Takeover of current and pending COBRA participants
- Coordination of collection of premiums from current Qualified Beneficiaries

Initial General Rights Notices (Per Letter, one-time charge at take-over) **\$2.00**

- Mail General Rights Notice to each covered employee

The total anticipated on-going annual cost is \$790.

Resolution Ordinance Contract Other (Specify) _____

Funding Source: _____

APPROVED FOR SUBMITTAL _____


Marketa Oliver, City Manager

STAFF RECOMMENDATION: adopt Resolution by roll call vote.

Resolution Approving a Continuation of Coverage Administration Agreement between the City of Norwalk and Kabel Business Services

WHEREAS, the City of Norwalk is a duly organized municipality; and,

WHEREAS, Kabel Business Services is a third party administrator that provides outsourcing solutions for a wide range of employee benefits programs.

WHEREAS, The City of Norwalk desires to enter into a continuation of coverage Administration Agreement between the City of Norwalk and Kabel Business Services to allow them to administer the COBRA policy for the City of Norwalk.

WHEREAS, The City of Norwalk desires to enter into a continuation of coverage Administration Agreement between the City of Norwalk and Kabel Business Services to allow them to administer the COBRA policy for the City of Norwalk based on the following associated costs:

One Time Set up Fee (based on a single location)	\$75.00
Includes:	
• Initial establishment of the Plan on our software	
• Initial mailing of General Rights Notices to all covered employees	
Annual Renewal Fee	\$70.00
Applied to each Plan renewal invoice, beginning with your second Plan Year	
Includes:	
• Adjustments to rate tables for all covered health plans	
• Delivery of open-enrollment forms with complete instructions to any former employee on COBRA	
Administration Fee (per Benefit Enrolled Participant, per month)	\$1.25
Monthly Minimum Administration Fee	\$50.00
Includes:	
• Mail Qualifying Event Notifications to Qualified Beneficiaries	
• Mail General Rights Notices to newly hired covered employees	
• Process and Adjudicate COBRA Elections	
• Process Monthly Premium Collections	
• Issue monthly insurance premium payment to Employers	
• Toll-free Employer and Qualified Beneficiary support and consultation	

Qualified Beneficiary Takeover Fee (One-time charge per participant) \$35.00

Includes:

- Audit/Takeover of current and pending COBRA participants
- Coordination of collection of premiums from current Qualified Beneficiaries

Initial General Rights Notices (Per Letter, one-time charge at take-over) \$2.00

- Mail General Rights Notice to each covered employee

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Norwalk, Iowa that the said agreement be executed.

PASSED AND APPROVED this 1st day of January 21, 2016.

Tom Phillips, Mayor

ATTEST:

Jodi Eddleman, City Clerk

<u>ROLL CALL VOTE:</u>	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
Kuhl	___	___	___
Lester	___	___	___
Isley	___	___	___
Riva	___	___	___
Livingston	___	___	___



COBRA Administration Proposal and Program Information

Prepared For:

City of Norwalk

Submitted By:

Larry Morgan

Kabel Business Services

1454 30th Street, Suite 105 ~ West Des Moines, IA 50266

Phone 515.224.9400 / 800.300.9691

Fax 515.224.9256

www.kabelbiz.com

Kabel Business Services is a Third Party Administrator (TPA) that provides outsourcing solutions for a wide range of employee benefits programs. We have been serving our clients for over 20 years, providing peace of mind and compliance assurance to our valued customers.

KBS currently offers the following services to our clients:

- COBRA Administration
- FMLA Administration
- Cafeteria Flex Plan Administration
- Health Savings Account Administration
- Health Reimbursement Arrangement Administration
- Payroll Services
- Time and Attendance
- HR Services
- Background Checks

Our experienced and dedicated staff work hard to uphold our reputation of quality service and reliability. We provide individualized, professional consultation to ensure that our clients are making the best benefit decisions for their organizations, no matter the size.

From two employees to two thousand, let us help you take the pain out of managing your employee benefit programs. Kabel Business Services will help you to attract and keep employees who appreciate their benefits, remain compliant with the ever-changing rules and regulations, and allow you to focus your time and energy on business objectives.

COBRA Administration Services

Kabel Business Services offers paperless administration options for convenient and accessible COBRA processing.

Our online system offers a secure environment for your COBRA data that is easy-to-use and loaded with functionality so you can easily view and manage everything related to your Plan:

- Enter Participating Qualified Beneficiary (PQB)
- Personal demographic information
- Eligible benefits
- Dependent information
- View PQB List
 - Personal information
 - Employment status
 - Coverage history
 - Eligibility dates
 - Payment records
 - Dependent information
 - COBRA notice mailing date
- Enter New Employees
- View Existing Employee List
 - Personal information
 - Initial date of coverage
- Search for COBRA Eligible Employees



Compliance

Kabel Business Services takes the burden from employers and provides peace of mind that their COBRA administration is in complete compliance with all federal rules and regulations.

In order to be compliant under COBRA, employers, or third party administrators on the employer's behalf, must comply with several time sensitive deadlines. Those deadlines relate specifically to "Qualified Beneficiary" notification, election dates, and premium payment dates if applicable.

Compliance Services Include:

- Recording and maintaining of documents on all COBRA activity
- Proof of qualifying event notification
- Establishment of election and payment receipt deadlines
- Maintenance of records on all COBRA correspondence

We at Kabel Business Services adhere to the highest ethical standards and are fully compliant with all I.R.S., state, and federal regulations. Our staff is fully trained, efficient, and personable. We strive to always live up to our motto: ***Service with a personal touch.***



COBRA Administration Proposal

One Time Set up Fee (based on a single location) Includes: <ul style="list-style-type: none"> • Initial establishment of the Plan on our software • Initial mailing of General Rights Notices to all covered employees 	\$75.00
Annual Renewal Fee Applied to each Plan renewal invoice, beginning with your second Plan Year Includes: <ul style="list-style-type: none"> • Adjustments to rate tables for all covered health plans • Delivery of open-enrollment forms with complete instructions to any former employee on COBRA 	\$70.00
Administration Fee (per Benefit Enrolled Participant, per month) Monthly Minimum Administration Fee	\$1.25 \$50.00
Includes: <ul style="list-style-type: none"> • Mail Qualifying Event Notifications to Qualified Beneficiaries • Mail General Rights Notices to newly hired covered employees • Process and Adjudicate COBRA Elections • Process Monthly Premium Collections • Issue monthly insurance premium payment to Employers • Toll-free Employer and Qualified Beneficiary support and consultation 	
Qualified Beneficiary Takeover Fee (One-time charge per participant) Includes: <ul style="list-style-type: none"> • Audit/Takeover of current and pending COBRA participants • Coordination of collection of premiums from current Qualified Beneficiaries 	\$35.00
Initial General Rights Notices (Per Letter, one-time charge at take-over) <ul style="list-style-type: none"> • Mail General Rights Notice to each covered employee 	\$2.00

Administrator Processing Fee

Kabel Business Services will charge and retain a 2% administration fee to COBRA Qualified Beneficiaries to include Retirees where allowed by law.

Retiree Billing (\$5.00 per Enrolled Participant, per month – billed to Retiree)

- Process Monthly Premium Collections
- Issue monthly insurance premium payment to Employers

Questions?

Please contact Larry Morgan @ (515)224-9400 or by email larrym@kabelbiz.com

**CONTINUATION OF COVERAGE
ADMINISTRATION AGREEMENT
Effective January 1, 2016**

between

**Kabel Business Services (“Continuation Administrator”)
and
City of Norwalk (“Sponsoring Employer” and “Plan Administrator”)**

WHEREAS, Sponsoring Employer has established and maintains certain benefit plans (“Plans”) some or all of which are welfare benefit plan(s) within the meaning of the Employee Retirement Income Security Act of 1974 (“ERISA”) that may include group health, group vision, group hearing, group pharmacy, medical reimbursement, health reimbursement arrangement (“HRA”), and/or group dental plans; and

WHEREAS, some or all of these Plans are required to provide continuation coverage under applicable law; and

WHEREAS, Kabel Business Services has expertise, experience and resources available to fulfill certain administrative responsibilities related to the Plans; and

WHEREAS, Sponsoring Employer and Plan Administrator desire that Kabel Business Services furnish certain services described in this Agreement in the operation and administration of the Plans;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and the exhibits and addenda, if any, attached hereto, Sponsoring Employer, Plan Administrator, and Kabel Business Services hereby agree as follows:

I. Continuation Administrator Responsibilities

- A. **Continuation Coverage Administration.** Kabel Business Services shall provide services with respect to Continuation Coverage under the Plan as described in this Article I. Kabel Business Services will not provide any services regarding administration of the Plan, including, but not limited to, administration of Continuation Coverage, unless such service is specifically described in this Article I or is required under another agreement among the Sponsoring Employer, Plan Administrator, and Kabel Business Services.
- B. **Account Servicing and Employee Communication.** Kabel Business Services shall provide account management services, including an assigned account representative. Kabel Business Services shall provide general Administrative Services to assist persons with general information about Continuation Coverage under the Plan and answer routine questions from persons concerning coverage status, complaint administration, and other inquiries related to Continuation Coverage under the Plan. Kabel Business Services shall notify Sponsoring Employer and Plan Administrator of any change in the individual or individuals assigned as account representatives within five (5) business days of such change.

- C. **General Notices.** If provided in Exhibit B, Kabel Business Services shall, based upon information provided by Sponsoring Employer, issue a general COBRA notice and a notice of privacy practices (if required under HIPAA) to all individuals who enroll in the Plan(s) subject to COBRA coincident with or subsequent to the Effective Date. Kabel Business Services is entitled to rely upon the information provided by Sponsoring Employer and is under no obligation to independently verify such information.
- D. **Continuation Coverage Eligibility, Notification of Right to Elect, and Notification of Unavailability.** Kabel Business Services shall determine if a Qualifying Event has occurred based upon information provided to it by Plan Administrator and/or the person making the claim for Continuation Coverage. Such determinations regarding claims shall be made in accordance with the written terms and conditions of the Plan. With respect to this responsibility, Kabel Business Services is entitled to rely upon the information provided by Plan Administrator and/or person making the claim and is under no obligation to independently verify such information. If Kabel Business Services determines a Qualifying Event has occurred, Kabel Business Services will generate and mail required notification information regarding the individual(s) ability to elect Continuation Coverage and election forms.

If Kabel Business Services determines no Qualifying Event has occurred, or a Covered Individual is not entitled to Continuation Coverage or an extension of Continuation Coverage, Kabel Business Services shall notify any person whose claim for Continuation Coverage is denied of the reasons for the denial and of the person's rights, if any, to have the denial reviewed in accordance with the terms and provisions of the Plan. The notification and review will be in a manner agreed upon by Plan Administrator and Kabel Business Services. Kabel Business Services will refer to Plan Administrator any claim or class of claims specified in writing by Plan Administrator as well as any claim that is disputed after the initial denial. Plan Administrator shall have final discretionary authority to make all determinations regarding Continuation Coverage under the Plan.

Notices described herein will be provided based upon the address information provided by Plan Administrator.

- E. **Reinstatement.** Provided the Qualified Beneficiary elects Continuation Coverage and pays any required premiums within the timeframes described in the election notification, if provided in Exhibit B, Kabel Business Services shall complete and submit any required documentation to insurance carriers and/or third party services providers regarding reinstatement of the coverage for Continuation Coverage purposes.
- F. **Termination/Cancellation of Continuation Coverage.** Except as specifically noted below, if provided in Exhibit B, Kabel Business Services shall complete and submit any required documentation to insurance carriers and/or third party services providers regarding termination of a Continuation Participant's Continuation Coverage, including, but not limited to, termination due to expiration of the required continuation period or failure to timely pay premiums. Kabel Business Services shall also provide any required notification of the cessation of Continuation Coverage to impacted Continuation Participants.
- G. **Continuation Payments.** Kabel Business Services shall collect payments for Continuation Coverage and deposit them in an account owned by Kabel Business Services. If a Continuation Participant makes a payment for Continuation Coverage directly to the Sponsoring Employer, Sponsoring Employer shall forward the entire premium payment to Kabel Business Services within one (1) week of receipt by the

Sponsoring Employer. On a weekly basis, Kabel Business Services shall forward Continuation Coverage payments collected by Kabel Business Services to Sponsoring Employer. In addition, Kabel Business Services may retain any interest earned on deposits (i.e., float) as additional compensation for its services hereunder. Kabel Business Services shall also notify Continuation Participants of any change in the premiums for the Continuation Coverage.

- H. **Insignificant Shortfall.** Unless provided otherwise in Exhibit B, amounts less than the entire cost of Continuation Coverage shall be accepted as payment in full if (1) timely paid; and (2) within the lesser of (a) \$50; or (b) ten percent (10%), of the actual amount due. Any deviations from these criteria or the criteria described in Exhibit B shall be at the direction of Plan Administrator; Kabel Business Services shall be entitled to rely on the direction of Plan Administrator. If indicated in Exhibit B, Kabel Business Services shall also provide notification of insignificant shortfalls in payments.
- I. **Late Premium Payments.** Kabel Business Services shall not accept premium payments for Continuation Coverage that are not made in a Timely manner. If a Continuation Participant fails to make a premium payment for Continuation Coverage in a Timely manner, Kabel Business Services shall terminate the Continuation Coverage in accordance with Article I.F. Notwithstanding the foregoing, if Plan Administrator directs Kabel Business Services to accept a premium payment that has not been made in a Timely manner, Kabel Business Services may follow such direction, provided that Plan Administrator shall be solely responsible for such decision and such decision shall be subject to Plan Administrator's indemnification obligations found in Article IV.C.
- J. **Open Enrollment.** If provided in Exhibit B, Kabel Business Services shall distribute annual enrollment materials to Continuation Participants during the applicable annual open enrollment period and answer questions from Continuation Participants regarding open enrollment. At the conclusion of the open enrollment period, Kabel Business Services shall provide to the Sponsoring Employer and the applicable insurance carriers and/or third party service providers enrollment and/or election information regarding the Continuation Participants. Sponsoring Employer shall provide to Kabel Business Services all information necessary to allow Continuation Participants to participate in open enrollment and Kabel Business Services is entitled to rely upon the information provided by Sponsoring Employer and is under no obligation to independently verify such information.
- K. **Reports.** If mutually agreed upon by the parties, reports shall be delivered to Sponsoring Employer and Plan Administrator within thirty (30) days following the end of the applicable reporting period.
- L. **Administrative Materials.** At the direction of Sponsoring Employer and Plan Administrator, Kabel Business Services shall prepare draft documentation relating to Continuation Coverage under the Plan, including, but not limited to, the initial general notice of rights, election forms, notice of rights following a qualifying event, and various administrative forms. Plan Administrator shall finalize and approve for use the administrative documents. Unless mutually agreed otherwise, such finalization shall be accomplished prior to the use or distribution of such documents.
- M. **Compliance with Applicable Law.** Kabel Business Services shall comply with federal and state laws and regulations applicable to Kabel Business Services' responsibilities under this Agreement.

- N. **Other.** Kabel Business Services shall also provide custom services, if any, as described in Exhibit B.
- O. **Excise Tax Reporting and Payment.** Unless required by applicable law, Kabel Business Services shall not be responsible for filing IRS Form 8928 and/or paying the excise tax imposed by Section 4980B of the Code with respect to the services Kabel Business Services provides under this Addendum.
- P. **HIPAA Portability.** Kabel Business Services shall not provide any services related to HIPAA portability compliance including, but not limited to, providing certificates of creditable coverage to Covered Individuals.
- Q. **Prior Administration.** If a Plan existed prior to the Effective Date, Kabel Business Services shall have no responsibility to audit or review the prior administration for compliance with the Plan and applicable law. If, in the course of providing Administrative Services to the Plan, Kabel Business Services discovers an error that occurred prior to the Effective Date, Kabel Business Services will promptly notify Employer and Plan Administrator of such error. Employer and Plan Administrator shall be solely responsible for determining whether, and in what manner, such error shall be addressed. Upon request, Kabel Business Services may assist Employer and Plan Administrator with correcting such error, provided that Employer and Plan Administrator agree to pay any additional fees charged by Kabel Business Services pursuant to Article II.B. Notwithstanding anything herein to the contrary, Kabel Business Services shall have no liability for the failure to discover errors in administration of the Plan occurring prior to the Effective Date.

II. Duties of Sponsoring Employer and Plan Administrator

- A. **Establishment & Plan Maintenance.** Sponsoring Employer shall establish and maintain the Plan. Plan Administrator shall be responsible for the operation and administration of the Plan. In accordance with this Agreement, Kabel Business Services shall provide Administrative Services to Sponsoring Employer and Plan Administrator in connection with the operation and administration of the Continuation Coverage under the Plan.
- B. **Payment of Administrative Services Fees.** In consideration of Kabel Business Services' provision of services described in this Agreement, the Plan or Sponsoring Employer shall pay Kabel Business Services' administrative fees as described in Exhibit B. All such fees are due and payable immediately upon receipt of an invoice. Any failure to remit any such fees within thirty (30) days may, at Kabel Business Services' option, result in Kabel Business Services' (1) suspension of performance of its services under this Agreement until such time as such fees are paid; or (2) termination of this Agreement. The fees described in Exhibit B shall be in addition to additional compensation provided to Kabel Business Services for its services hereunder, including the two (2) percent administrative fee and the float described in Article I.G. In the event additional services that are not part of the normal Administrative Services contemplated by this Agreement, or chosen by Sponsoring Employer on Exhibit B, are required, Kabel Business Services may charge the Sponsoring Employer an additional fee commensurate with the additional services provided. Kabel Business Services will inform the Sponsoring Employer of the amount of the additional fee in advance of conducting the additional services.
- C. **Regulatory Compliance.** Sponsoring Employer and Plan Administrator shall be responsible for compliance with applicable laws and regulations pertaining to the Plan.

Sponsoring Employer and Plan Administrator shall be responsible for any governmental or regulatory charges, including, but not limited to, premium taxes, provider surcharges and/or taxes, insolvency find fees, guarantee find fees, user fees, licensing fees or other charges resulting from Sponsoring Employer's establishment and operation of the Plan. This provision does not relieve Kabel Business Services from any statutory or agency requirements placed directly on it as a result of performing services under this Agreement.

- D. **Legal Obligations.** Sponsoring Employer or Plan Administrator shall possess ultimate responsibility and authority for the operation of the Plans and for their compliance with all applicable laws and regulations pursuant to the provisions of the Plans.
- E. **Provision of Relevant Information.** Sponsoring Employer shall provide to Kabel Business Services all relevant information, as determined by Kabel Business Services, necessary for Kabel Business Services to perform the Administrative Services. Sponsoring Employer shall cooperate with Kabel Business Services periodic requests to provide and reconcile information regarding the number of individuals upon which payment is based. Within ten (10) days following the date on which Kabel Business Services begins to provide services to Sponsoring Employer with respect to Continuation Coverage, Sponsoring Employer shall provide to Kabel Business Services a list of all Continuation Participants and all Qualified Beneficiaries who have not yet become Continuation Participants and the dates on which: (i) such individuals experienced Qualifying Events; (ii) such individuals' coverage under the Plan(s) ended; (iii) such individuals were provided an election notice, if any; and (iv) such individuals elected Continuation Coverage, if they have done so. Kabel Business Services is entitled to rely upon all information provided by Sponsoring Employer and is under no obligation to independently verify such information.
- F. **Late Notification to Continuation Administrator.** Kabel Business Services' responsibilities under this Agreement are, in some cases, triggered upon notification by Sponsoring Employer and/or Plan Administrator as described above. If such notification is not made timely, Kabel Business Services shall use best efforts to quickly perform its responsibilities. However, ultimate responsibility for any consequences, damages, penalties, and the like attributable in whole or in part to the late notification to Kabel Business Services remain with Sponsoring Employer and Plan Administrator. For purposes of this provision, "timely" refers to a period of time specified in this Agreement or, if not specified, the period of time reasonably sufficient for Kabel Business Services to perform its responsibilities within the time period required under applicable state and/or federal law.
- G. **Review of Reports.** Plan Administrator shall review reports made available by Kabel Business Services and shall notify Kabel Business Services of any errors or omissions in the reports within thirty (30) days of their receipt. For purposes of this Agreement, a report is deemed received on the earlier of: (1) the date on which Kabel Business Services notifies Plan Administrator of the report's availability on Kabel Business Services' website; or (2) the date on which the report is sent by Kabel Business Services to Plan Administrator. If Plan Administrator does not notify Kabel Business Services of any errors or omissions within such thirty (30) day period, Plan Administrator shall be deemed to have approved the accuracy of the reports and Kabel Business Services shall be released and relieved of all liability, and shall be indemnified by Plan Administrator, for any actions taken pursuant to this Agreement based upon the information contained in the reports. By way of illustration, and without limiting the generality of the foregoing, under this provision Plan Administrator shall be responsible for matching information received from

the insurance carriers and/or third party service providers regarding individuals covered under the Plan to the information contained in Kabel Business Services' reports and for notifying Kabel Business Services of any discrepancies. If Plan Administrator does find an error or discrepancy and notifies Kabel Business Services of such within the thirty (30) day period provided above, Kabel Business Services will take immediate steps to address the matter. Notwithstanding anything herein to the contrary, Kabel Business Services shall not be liable for any error or omission of an insurance carrier and/or third party service provider with respect to reinstating or terminating a Qualified Beneficiary's or COBRA Participant's coverage if Kabel Business Services has fulfilled its responsibilities under Articles I.E. and I.F. hereof.

- H. **Cost of Continuation Coverage.** Sponsoring Employer and/or Plan Administrator shall provide Kabel Business Services with the Applicable Premium calculations for Continuation Coverage under the Plan at least thirty (30) days prior to the start of the twelve-month period to which they relate. Kabel Business Services shall be entitled to rely on such information. Unless Plan Administrator provides written direction otherwise, Kabel Business Services shall charge COBRA Participants the maximum premium for COBRA Coverage allowed under applicable law. If Employer and/or Plan Administrator fail to timely notify Kabel Business Services of the Applicable Premium, Kabel Business Services shall continue to charge premiums for the COBRA Coverage based upon the Applicable Premium for the prior twelve-month period. If Employer and/or Plan Administrator notify Kabel Business Services of a new Applicable Premium for an applicable twelve-month period after the deadline provided above, Kabel Business Services will begin charging COBRA Coverage premiums based upon the new Applicable Premium beginning with the first month occurring at least thirty (30) days following Kabel Business Services' receipt of such information from Employer and/or Plan Administrator. Kabel Business Services shall be released and relieved of all liability related to, and shall be indemnified by Employer and Plan Administrator with respect to, premium changes made after the start of the applicable twelve-month period as a result of Employer's and/or Plan Administrator's failure to comply with the notice requirement contained herein.

- I. **Continuation Coverage Documents.** Sponsoring Employer and Plan Administrator shall provide direction to Kabel Business Services, as necessary, regarding Continuation Coverage documentation. Sponsoring Employer and Plan Administrator shall approve all such materials within thirty (30) days following delivery by Kabel Business Services, unless such deadline is extended by mutual agreement of all parties. Sponsoring Employer and Plan Administrator's failure to object within such time period (including any agreed upon extension period) shall constitute approval. Sponsoring Employer and Plan Administrator shall be solely responsible for the content of Continuation Coverage documentation it has been provided for review and approval.

- J. **Status of Continuation Administrator.** Sponsoring Employer shall not (1) name Kabel Business Services as Plan Administrator, Sponsoring Employer or a Named Fiduciary in any documents, including the Plan document, with respect to the Continuation Coverage under the Plan; nor (2) hold out to other parties, including Continuation Participants, that Kabel Business Services serves in any of the foregoing capacities. In addition, Kabel Business Services does not intend to assume any of the administrative duties or responsibilities commensurate with such designations.

- K. **Alternative Coverage.** Sponsoring Employer and Plan Administrator must notify Kabel Business Services of any Alternative Coverage that impacts the services that would otherwise be provided by Kabel Business Services under this Agreement. If such Alternative Coverage increases the amount of work Kabel Business Services must perform to comply with this Agreement, Kabel Business Services reserves the right to charge additional administrative service fees hereunder as agreed by the parties. Kabel Business Services shall be entitled to rely on the information provided by Sponsoring Employer and Plan Administrator.
- L. **Continuation Coverage Determinations.** Through this Agreement, Plan Administrator delegates to Kabel Business Services authority to make the described determinations related to Continuation Coverage under the Plan. If Plan Administrator disagrees with Kabel Business Services on a particular determination Plan Administrator shall immediately notify Kabel Business Services, in writing, of such disagreement and direct Kabel Business Services regarding the situation. Plan Administrator shall be solely responsible for the final initial determination on such claim, which shall be communicated in writing to Kabel Business Services. Kabel Business Services shall be entitled to rely on the final initial determination made by Plan Administrator.

As between Kabel Business Services and Plan Administrator, Plan Administrator is responsible for the final decision upon review of disputed eligibility and coverage issues, including determinations with respect to Continuation Coverage. Upon receipt of applicable information and documentation from Kabel Business Services, Plan Administrator shall notify Kabel Business Services in writing of its final decision upon review of disputed eligibility and coverage issues.

- M. **Family & Medical Leave Act of 1993 ("FMLA").** Sponsoring Employer shall make determinations regarding FMLA. Kabel Business Services shall not make determinations regarding FMLA. Furthermore, Kabel Business Services shall be entitled to rely upon the information provided by Sponsoring Employer and is under no obligation to independently verify such information.
- N. **Excise Tax Reporting and Payment.** Employer and Plan Administrator are solely responsible for: (i) determining whether IRS Form 8928 must be filed for the purpose of reporting a violation of COBRA; (ii) preparing and filing Form 8928 (if necessary); and (iii) paying any excise tax imposed by Section 4980B of the Code. Notwithstanding the foregoing, upon request, Kabel Business Services may assist Employer and Plan Administrator with its responsibilities under this paragraph.
- O. **Qualified Medical Child Support Orders ("QMCSO").** Plan Administrator shall be responsible for all aspects of compliance with Section 609(a) of ERISA regarding qualified medical child support orders ("QMCSO"), including, but not limited to establishing QMCSO procedures and determining whether a medical child support order is "qualified." Plan Administrator shall provide notice to Kabel Business Services of any Covered Individuals who cease to be covered under the Plan by virtue of the expiration of a QMCSO. Kabel Business Services shall be entitled to rely upon the information provided by Plan Administrator pertaining to QMCSOs.

III. Records & Information

- A. **Maintenance and Access.** Sponsoring Employer, Plan Administrator and Kabel Business Services shall maintain adequate records relating to the terms and operation of the Plans for at least the Plan Year to which the records relate and for an eight (8) year

period thereafter. Each party shall have access to the records relating to the Plans maintained by the other party during normal business hours and upon reasonable notice and request and subject to applicable laws and regulations. The parties shall maintain the confidentiality of any information relating to Participants and the Plans in accordance with applicable laws and regulations. At the conclusion of the period for which records are required to be kept under this provision and prior to any modification, destruction or disposal of any records, Kabel Business Services shall provide Sponsoring Employer and Plan Administrator an opportunity to review the records and obtain copies of any such records. All costs associated with such inspection and copying of records will be paid by Sponsoring Employer.

- B. **Record Use.** Kabel Business Services, Sponsoring Employer and Plan Administrator agree that the medical records, names, addresses, telephone numbers, Social Security numbers and other personal information relating to Participants, which Kabel Business Services may obtain as a result of performing Administrative Services may be collected, maintained and used by Kabel Business Services and Plan Administrator as necessary to administer the Plan. Kabel Business Services and Plan Administrator may use patient specific and individually identifiable information, as necessary to properly administer the Plan, to defend any claim related to the Plan or to the provision of services under this Agreement, or as otherwise may be permitted by state or federal law. All parties agree that such information shall be considered confidential and protected as required under applicable law.
- C. **Confidential Business Information.** Kabel Business Services, Sponsoring Employer and Plan Administrator shall each take all necessary steps to protect the other party's confidential business information. Such information shall not be disclosed to third parties without the express written consent of the other party unless required by law or court order.
- D. **Use of Continuation Administrator's Confidential and Proprietary Information.** The parties agree that Kabel Business Services' "service package" is proprietary. Sponsoring Employer and Plan Administrator agree not to use this information other than for the specific purposes of carrying out the terms of this Agreement, and shall disclose it only to its officers, directors, employees or contractors with a specific need to know.
- E. **Transfer of Records.** When this Agreement ends, Kabel Business Services may transfer to Sponsoring Employer, Plan Administrator and/or any successor administrator those records Kabel Business Services determines are reasonably necessary to effectuate a smooth transition of administration of the Plan and any other records Kabel Business Services possesses that relate to the Plan. Kabel Business Services intends that this transfer of records will satisfy its obligation to maintain such records as described above. Kabel Business Services shall provide Plan Administrator an opportunity to review the records and obtain copies of any such records in addition to the records Kabel Business Services has identified as necessary for a smooth transition or otherwise transferred. The details of such transfer, including but not limited to the means, method and timing, shall be agreed to by the parties. All costs associated with such a record review and transfer will be paid by Sponsoring Employer.
- F. **HIPAA Business Associate.** Kabel Business Services acknowledges its role as a business associate for purposes of the privacy and security standards under HIPAA. Exhibit C reflects the business associate contractual requirements.

IV. Indemnification and Limitation of Liability

- A. **No Guarantee of Benefits.** Kabel Business Services does not assume any responsibility, risk, liability or obligation for the general policy direction of the Plan, the adequacy of funding thereof, or any act or omission or breach of duty by parties other than Kabel Business Services. Kabel Business Services is not and shall not be deemed a guarantor with respect to any benefits payable under the Plan.
- B. **Indemnification for Design/Interpretation.** Kabel Business Services is not engaged in the practice of law. The resolution of any legal issues concerning the Plan is the responsibility of Plan Administrator and/or Employer and their legal counsel. Plan Administrator and Sponsoring Employer shall indemnify, hold harmless, and defend Kabel Business Services from and against any and all liabilities, losses, damages, claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees Kabel Business Services may incur or be asked to pay), arising, directly or indirectly, out of the design and/or interpretation of the Plan, including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees Kabel Business Services may incur or be asked to pay) arising under any state, federal or local law or regulation.
- C. **General Indemnification by Plan Administrator and Sponsoring Employer.** Plan Administrator and Sponsoring Employer shall indemnify, hold harmless, and defend Kabel Business Services and its directors, trustees, officers, employees, and agents from and against any and all liabilities, losses or damages arising out of any claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees Kabel Business Services may incur or be asked to pay), which arise, directly or indirectly, from Plan Administrator's or Employer's act or omission to act in its administration of the Plan, including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees Kabel Business Services may incur or be asked to pay) arising under any law.
- D. **Indemnification for Prior Administration.** If a party other than Kabel Business Services previously provided continuation services to the Plan, Plan Administrator and Sponsoring Employer shall indemnify, hold harmless, and defend Kabel Business Services and its directors, trustees, officers, employees, and agents from and against any and all liabilities, losses or damages arising out of any claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees Kabel Business Services may incur or be asked to pay), which arise, directly or indirectly, from such prior administration, including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees Kabel Business Services may incur or be asked to pay) arising under any law.
- E. **Continuation Administrator's Duty to Indemnify.** Kabel Business Services shall indemnify, hold harmless, and defend Plan Administrator and Sponsoring Employer and their directors, trustees, officers, employees, and agents from and against any and all liabilities, losses or damages arising out of any claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees Plan Administrator and Sponsoring Employer may incur or be asked to pay), which arise, directly or indirectly, from Kabel Business Services' act or omission to act in its administration of the Plan, including, but not limited to, any liability, losses, damages,

claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees Plan Administrator and Sponsoring Employer may incur or be asked to pay) arising under any law.

- F. **Limitation of Liability.** Kabel Business Services shall exercise, in the performance of its duties, reasonable care and shall be liable for loss only when caused by Kabel Business Services' (or Kabel Business Services' subcontractors) negligence, gross negligence, fraud, willful misconduct, criminal conduct or a material breach of this Agreement. Kabel Business Services shall be responsible for direct damages caused by its failure to satisfy its duties hereunder; provided, however, that Kabel Business Services shall not be liable for any incidental or consequential damages caused by its failure to satisfy its duties hereunder. Kabel Business Services shall not be liable for processing that is delayed due to circumstances beyond its reasonable control, including, but not limited to, national, state, or city disaster, acts of God, acts of war, severe weather, or any other circumstances that would affect Kabel Business Services or its software or Internet systems.
- G. **Reliance on Data & Direction.** Notwithstanding any provision of this Agreement to the contrary, Kabel Business Services is not responsible or liable for any acts or omissions made pursuant to any direction, consent or other request reasonably believed by Kabel Business Services to be genuine and from an authorized representative of Sponsoring Employer and Plan Administrator. Kabel Business Services is not responsible or liable for acts or omissions made in reliance on erroneous data provided by Sponsoring Employer or Plan Administrator to the extent Kabel Business Services' acts or omissions are attributable to the erroneous data, or for the failure of Sponsoring Employer or Plan Administrator to perform their obligations under this Agreement. Kabel Business Services is also entitled to rely upon Sponsoring Employer's determination that Sponsoring Employer is an entity subject to ERISA. To the extent Sponsoring Employer or Plan Administrator request special Administrative Services, special arrangements regarding responsibilities, liabilities, indemnification, etc. they shall be described in Exhibit B.

V. Term and Termination

- A. **Term.** This Agreement is effective as of the Effective Date and shall continue for a period of twelve (12) consecutive months and for each twelve (12) consecutive month period thereafter until the termination of this Agreement pursuant to this Article V of the Agreement. Notwithstanding the expiration or termination of this Agreement, the provisions of Articles III, IV, and V shall remain in force.
- B. **Termination.** This Agreement may be terminated by any party by providing at least sixty (60) days written notice of the intention to terminate given to the other party to be effective as of the date provided in such notice.
- C. **Option for Immediate Termination.**
 - 1. A party shall have the option to terminate this Agreement immediately upon the material breach of the terms of this Agreement by the other party, including failure to remit service fees due Kabel Business Services, if such material breach is not corrected within thirty (30) days of receipt of written notice specifying the nature of the breach to the reasonable satisfaction of the non-breaching party.
 - 2. A party shall have the option to terminate this Agreement immediately upon the bankruptcy or insolvency of the other party.

3. A party shall have the option to terminate this Agreement immediately upon the enactment of any law, promulgation of any regulation or action of any state or federal agency or authority which makes or declares illegal the continuance of this Agreement or the performance of any of the services of Kabel Business Services hereunder.
- D. **Post-Termination Obligation.** Unless mutually agreed upon by Sponsoring Employer, Plan Administrator and Kabel Business Services, Kabel Business Services shall not provide Administrative Services following the termination of this Agreement. Kabel Business Services shall forward all Continuation Coverage information, inquiries, elections, etc. to the person or entity designated by Sponsoring Employer and Plan Administrator. Absent such designation, all references shall be made to Sponsoring Employer.

VI. Definitions

The following Definitions shall apply to this Agreement:

- A. **Administrative Services** – means those services relating to the administration of the Plan(s) to be performed by Kabel Business Services as set forth in this Agreement.
- B. **Agreement** – means this Group Health Continuation of Coverage Administration Agreement and any Exhibits attached hereto and any outside agreements specifically incorporated by reference.
- C. **Alternative Coverage** – means non-COBRA coverage offered as an alternative to COBRA, made available to induce a Qualified Beneficiary not to elect COBRA.
- D. **Applicable Premium** – means the cost to the Plan for a period of coverage (for example, one, two or three months) for similarly situated Covered Individuals for whom a Qualifying Event has not occurred.
- E. **Code** – means the Internal Revenue Code of 1986 and regulations thereunder, as amended from time to time.
- F. **COBRA** – means the Consolidated Omnibus Budget Reconciliation Act of 1985 (as it appears in the Code and ERISA) and regulations thereunder, as amended from time to time.
- G. **Continuation Administrator** – means Kabel Business Services (including all authorized representatives of Kabel Business Services), an independent contractor designated to perform certain Administrative Services pursuant to this Agreement with respect to the Plan(s).
- H. **Continuation Coverage** – means the continuation coverage required under COBRA.
- I. **Covered Individual** – means a person properly covered under the Plan to which Kabel Business Services is providing services, including a Participant, the spouse and dependents of the Participant, and (if applicable) the domestic partner or same sex spouse of the Participant covered pursuant to the terms of the Plans.
- J. **Continuation Participant** – means any person receiving Continuation Coverage under the Plan in accordance with the terms and conditions of the Plan and applicable law, including, but not limited, to Qualified Beneficiaries.

- K. **Effective Date** – means the date upon which this Agreement, once fully executed by all parties, is effective, as indicated on page one of this agreement.
- L. **ERISA** – means the Employee Retirement Income Security Act of 1974 and regulations thereunder, as amended from time to time.
- M. **Exhibit** – means the exhibit attached to and incorporated into this Agreement as may be amended from time to time in accordance with Section VII.A.
- N. **Fiduciary** – means Plan Administrator, Sponsoring Employer (as the Named Fiduciary in the Plan), and any other person who satisfies the definition of “fiduciary” under ERISA.
- O. **HIPAA** – means the Health Insurance Portability and Accountability Act of 1996 and regulations thereunder, as amended from time to time.
- P. **Named Fiduciary** – is a term described in Section 402(a)(1) of ERISA that is applicable to the Plans subject to ERISA and means Sponsoring Employer.
- Q. **Participant** – means an employee of the Sponsoring Employer who has become a participant in the Plan pursuant to the terms thereof and those participating in the Plan pursuant to a qualified medical child support order. “Participant” does not include Continuation Participants.
- R. **Plan(s)** – means the benefit plan or plans identified in Exhibit A covered by this Agreement. Plan may also refer to the written plan document requirement under ERISA and/or the Code.
- S. **Plan Administrator** – means Sponsoring Employer.
- T. **Qualified Beneficiary** – means a covered employee or the spouse, former spouse, dependent child or (if applicable) domestic partner or same sex spouse of the covered employee, who has lost group coverage in a Qualifying Event and is entitled to elect Continuation Coverage.
- U. **Qualifying Event** – means the loss of coverage under a group plan on account of one of the specific events described in COBRA, the loss of coverage triggering Continuation Coverage rights under applicable state law, and the loss of coverage triggering Continuation Coverage rights under the terms of the Plan.
- V. **Sponsoring Employer** – means City of Norwalk.
- W. **Timely** – means within the deadline established in the Plan or in the policies and procedures adopted by the Plan Administrator, provided such deadline complies with applicable law.

VII. Miscellaneous

- A. **Agreement Amendment.** This Agreement may be amended only by mutual agreement in writing executed by all parties, except that Kabel Business Services may amend this Agreement to the extent necessary to comply with applicable federal, state or local laws or regulations. Notwithstanding the foregoing, Kabel Business Services may amend Exhibit B to this Agreement by providing to Sponsoring Employer a copy of the amended Exhibit B at least sixty (60) days before it is effective, provided that if Sponsoring Employer provides written notice to Kabel Business Services of its objection to such amendment prior to its effective date, such amendment shall not become effective.

- B. **Notices.** All notices, requests, consents and other communications required or permitted between the parties to this Agreement shall be (1) in writing and delivered personally, or sent by registered or certified mail or nationally recognized overnight carrier, postage prepaid; (2) in writing and sent by facsimile transmission, to the address set forth below, or to such other address set forth in a notice given in the manner herein provided; or (3) sent by e-mail or other electronic means capable of being reduced to writing. All such notices, requests, information or other communications shall be deemed to have been given (i) when delivered if personally delivered; (ii) three business days after having been placed in the mail, if delivered by registered or certified mail; (iii) the business day after having been placed with a nationally recognized overnight carrier, if delivered by nationally recognized overnight carrier; (iv) the first business day after the date received by the electronic modality; and (v) the business day after transmittal by facsimile if transmitted with electronic confirmation of receipt.

If to Sponsoring Employer and Plan Administrator:

City of Norwalk
Contact:
Address:
City:
State:
Email Address:
Telephone:
Fax:

If to Continuation Administrator:

Kabel Business Services
Attn: COBRA Administrator
1454 30th Street Suite #105
West Des Moines, IA 50266
Email address: songt@kabelbiz.com
Telephone: 515-224-9400
Toll Free: 800-300-9691
Fax: 515-224-9256

Upon the occurrence of a change in any of the above address information, each party shall notify the other party(ies) of such change within five (5) business days of the effective date of the change.

- C. **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement is held invalid by a court of law or other tribunal, the invalidity of any provision will not affect any other provision of this Agreement.
- D. **No Waiver of Rights.** Nothing in this Agreement shall be deemed to limit or abrogate any right or remedy available under law. The failure of any party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive any such right or remedy.
- E. **Non-Assumption of Liabilities.** Unless specifically provided in this Agreement, the parties do not assume the existing or future obligations, liabilities or debts of the other party.
- F. **Entire Agreement.** This Agreement shall supersede and replace any and all other agreements between the parties relating to the same subject matter. This Agreement contains the entire agreement and understanding of the parties relating to the subject matter hereof, except as otherwise provided in this Agreement.
- G. **Governing Law.** The Agreement shall be governed by and interpreted in accordance with applicable federal law, including, but not limited to, ERISA. To the extent the federal law does not govern, this Agreement shall be governed by the laws of the State of Iowa and the courts in such state shall have sole and exclusive jurisdiction of any dispute related hereto and arising hereunder.
- H. **Independent Contractors.** Kabel Business Services shall be construed to be acting as an independent contractor and not as an employee of Sponsoring Employer or Plan Administrator. Kabel Business Services, Sponsoring Employer and Plan Administrator shall not have the power or authority to act for or on behalf of, or to bind the other party, except as set forth in this Agreement. Because Kabel Business Services is a corporation and payments made hereunder are not medical payments, withheld income tax of foreign tax, barter exchange transactions, substitute or abandonment's of secured property or cancellation of debt, no Form 1099 is required to be filed with the IRS for payments made pursuant to this Agreement.
- I. **Third Party Beneficiaries.** The obligations of each party to this Agreement shall inure solely to the benefit of the other party(ies). Except as expressly provided in this Agreement, no person or entity is intended to be or shall be construed or deemed to be a third party beneficiary of this Agreement.
- J. **Subcontractors.** Kabel Business Services may hire subcontractors to perform any of the services required of it under this Agreement and to act as its designee for purposes of this Agreement.
- K. **Successors and Assigns.** This Agreement shall be binding on any successors, assigns and subcontractors of the parties authorized under this Agreement.
- L. **Audit Rights.** The parties agree to cooperate in all reasonable audits. Audit fees shall be payable by the party initiating the audit. Audits shall be conducted using procedures mutually agreed upon by the parties. Results of the audit may be shared with the party being audited at the sole discretion of the party initiating the audit.

- M. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- N. **Construction.** The parties represent and warrant that the terms and conditions of this Agreement are the result of negotiations among them and that the construction of this Agreement shall not favor or hurt any party by reason of the extent to which any party or his legal counsel participated in the drafting of this Agreement.
- O. **Material Change in Law.** With the exception of changes described in Article V.C.3., if substantial changes to laws and/or regulations materially affect the rights or responsibilities of any party to this Agreement, the parties to this Agreement agree to enter into negotiations to attempt to adequately respond to such changes. Any such changes must be reflected in a written amendment to this Agreement. If the parties are unable to agree upon an appropriate resolution, a party adversely affected by such changes may terminate this Agreement under Article V.B.
- P. **Force Majeure.** Neither party shall be liable for any delay or failure to perform its obligations under this Agreement arising out of a cause beyond its control or without its fault or negligence. Such causes may include, but are not limited to, fires, floods, and natural disasters.
- Q. **Fidelity Bond.** Kabel Business Services shall obtain a fidelity bond meeting the minimum requirements of ERISA and other applicable law, with respect to any of its employees handling assets of Plan(s) subject to ERISA.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

SPONSORING EMPLOYER

PLAN ADMINISTRATOR

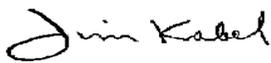
By: _____
 Company Representative
 City of Norwalk

By: _____
 Authorized Representative
 City of Norwalk

Its: _____

Its: _____

CONTINUATION ADMINSTRATOR

By: 
 Authorized Representative of
 Kabel Business Services
 Its: President

LIST OF EXHIBITS

- A Plans and Providers
- B Administrative Fees
- C Business Associate

EXHIBIT A
Plans and Providers

Please provide us with the Carrier and plan names for all the benefits listed below if they are applicable.

Type of Plan	Name of Plan	Carrier or Provider
Group Medical Benefits		
Group Dental Benefits		
Group Vision Benefits		
Flex Medical Expense Plan		
Flex Limited Scope Medical Expense Plan		
HRA Plan		
Employee Assistance Plan		

EXHIBIT B
Administrative Fees

The Plan or Sponsoring Employer shall make payments of administrative service fees in accordance with the following schedule:

One Time Set up Fee (based on a single location)	\$75.00
Includes:	
<ul style="list-style-type: none"> • Initial establishment of the Plan on our software • Initial mailing of General Rights Notices to all covered employees 	
Annual Renewal Fee	\$70.00
Applied to each Plan renewal invoice, beginning with your second Plan Year	
Includes:	
<ul style="list-style-type: none"> • Adjustments to rate tables for all covered health plans • Delivery of open-enrollment forms with complete instructions to any former employee on COBRA 	
Administration Fee (per Benefit Enrolled Participant, per month)	
\$1.25	
Monthly Minimum Administration Fee	\$50.00
Includes:	
<ul style="list-style-type: none"> • Mail Qualifying Event Notifications to Qualified Beneficiaries • Mail General Rights Notices to newly hired covered employees • Process and Adjudicate COBRA Elections • Process Monthly Premium Collections • Issue monthly insurance premium payment to Employers • Toll-free Employer and Qualified Beneficiary support and consultation 	
Qualified Beneficiary Takeover Fee (One-time charge per participant)	
\$35.00	
Includes:	
<ul style="list-style-type: none"> • Audit/Takeover of current and pending COBRA participants • Coordination of collection of premiums from current Qualified Beneficiaries 	
Initial General Rights Notices (Per Letter, one-time charge at take-over)	
\$2.00	
<ul style="list-style-type: none"> • Mail General Rights Notice to each covered employee 	

Administrator Processing Fee

Kabel Business Services will charge and retain a 2% administration fee to COBRA Qualified Beneficiaries where allowed by law.

Retiree Billing (\$5.00 per Enrolled Participant, per month – billed to Retiree)

- Process Monthly Premium Collections
- Issue monthly insurance premium payment to Employers

EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT
[reflecting HITECH under ARRA]

This Exhibit C – Business Associate Agreement (“Agreement”) is entered into by and between City of Norwalk (“Covered Entity”) and Kabel Business Services (“Business Associate”).

I. Purpose

- A. Business Associate is contractually obligated to provide certain services related to one or more “covered entities” as that term is defined and regulated under HIPAA. The parties to this Agreement acknowledge that (1) Business Associate is a “business associate” as that term is defined and regulated under the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”); and (2) Business Associate provides services to one of more “covered entities” as that term is defined and regulated under HIPAA.
- B. This Agreement is intended to constitute a “business associate” agreement between the Plan, as a Covered Entity, and the Business Associate, as required under the privacy and security provisions of HIPAA, as amended. Portions of HIPAA apply directly to Business Associate as provided in the Health Information Technology for Economic and Clinical Health Act (“HITECH”), part of the American Recovery and Reinvestment Act of 2009 (“ARRA”). Business Associate’s obligations under this Agreement may be the same as, or in some cases in addition to, Business Associate’s own obligations under HIPAA as provided in HITECH.

II. Special Definitions

The following definitions are used by this Exhibit C – Business Associate Agreement:

- A. **Agreement** – means this Business Associate Agreement, which is an agreement required under 45 C.F.R. Section 164.314(a)(2) between a Business Associate and a Covered Entity.
- B. **ARRA** – means the American Recovery and Reinvestment Act of 2009.
- C. **Breach** - means the acquisition, access, use, or disclosure of PHI in a manner not permitted by 45 C.F.R. part 164, subpart E which compromises the security or privacy of such information (meaning that it poses a significant risk of financial, reputational, or other harm to the individual). A use or disclosure of PHI that does not include the identifiers listed at 45 C.F.R. § 164.514(e)(2), date of birth, and zip code does not compromise the security or privacy of the PHI. “Breach” does not include: (1) any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Business Associate if such acquisition, access, or use was made in good faith and within the course and scope of the authority and does not result in further use or disclosure in a manner not permitted by 45 C.F.R. part 164, subpart E; (2) any inadvertent disclosure by a person who is authorized to access PHI at a Business Associate to another person authorized to access PHI at the Business Associate, and any such information received as a result of the disclosure is not further used or disclosed in a manner not permitted by 45 C.F.R. part 164, subpart E; or (3) a disclosure of PHI where the Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably be able to retain such information.

- D. **Business Associate** – means a person or entity described in 45 C.F.R. Section 160.103 who performs certain functions on behalf of a Covered Entity.
- E. **Covered Electronic Transactions** – shall have the meaning given to the term “transaction” in 45 C.F.R. Section 160.103.
- F. **Covered Entity** – means the Plan, an entity described in 45 C.F.R. Section 160.103.
- G. **Covered Individual** – means a person who is eligible for payment of certain services or supplies rendered or sold to the person or the person’s eligible dependents under the terms, conditions, limitations, and exclusions of a health benefit program of the Plan.
- H. **Data** – means formalized representation of specific facts or concepts suitable for communication, interpretation, or processing by people or automatic means.
- I. **Data Aggregation** – means, with respect to PHI created or received by Business Associate in its capacity as a business associate (as that term is defined in 45 C.F.R. Section 160.103) of the Plan, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a business associate of another covered entity (as those terms are defined in 45 C.F.R. Section 160.103), to permit data analyses that relate to the health care operations of the respective covered entities.
- J. **Designated Record Set** – means a group of records maintained by or for the Covered Entity that is (1) the medical records and billing records about Individuals maintained by or for a covered health care provider; (2) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for the Covered Entity; or (3) used, in whole or in part, by or for the Covered Entity to make decisions about Individuals. As used herein, the term “Record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used or disseminated by or for the Covered Entity.
- K. **Effective Date** – means January 1, 2016, unless specifically noted otherwise herein.
- L. **Electronic Protected Health Information** – shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. 160.103, limited to the information created, received, or transmitted by Business Associate from or on behalf of Covered Entity.
- M. **HITECH** - means the Health Information Technology for Economic and Clinical Health Act and any accompanying regulations, as the same may be amended from time to time.
- N. **HHS** – means the United States Department of Health and Human Services.
- O. **Including** – means “including but not limited to.”
- P. **Individual** – shall have the same meaning as the term “individual” in 45 C.F.R. Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).
- Q. **Limited Data Set** – shall have the same meaning as the term “limited data set” in 45 C.F.R. Section 164.514(e)(2).

- R. **Plan** – means the “organized health care arrangement” as that term is defined in 45 C.F.R. Section 160.103, consisting of the plans collectively considered the organized health care arrangement.
- S. **Privacy Rule** – means the Standards and Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, subparts A and E and the privacy provisions of HIPAA, as amended.
- T. **Protected Health Information or PHI** – shall have the same meaning as the term “protected health information” in 45 C.F.R. 164.501, limited to the information created, received, or transmitted by Business Associate from or on behalf of Covered Entity protected. Health Information specifically includes Electronic Protected Health Information.
- U. **Provider** – means a hospital or professional practitioner duly certified or licensed to provide health care services to Covered Individuals.
- V. **Required By Law** – shall have the same meaning as the term “required by law” in 45 C.F.R. Section 164.103.
- W. **Secretary** – means the Secretary of the Department of Health and Human Services or his/her designee.
- X. **Security Incident** – shall have the same meaning as the term “security incident” in 45 C.F.R. Section 164.304, unless defined differently in Covered Entity’s policies and procedures for compliance with the Security Rule, which shall be provided to the Business Associate.
- Y. **Security Rule** – means the Security Standards and Implementation Specifications at 45 C.F.R. Part 160 and Part 164, subpart C and the security provisions of HIPAA, as amended.
- Z. **Standards for Electronic Transactions Rule** - means the final regulations issued by HHS concerning standard transactions and code sets under the Administrative Simplification provisions of HIPAA, 45 C.F.R. Part 160 and Part 162.
- AA. **Subcontractor** – means an individual described in 45 C.F.R. Section 160.103.
- BB. **Unsecured Protected Health Information** means Protected Health Information that has not been rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary. As of August 24, 2009, the Secretary has specified the following technologies and methodologies that will render Protected Health Information unusable, unreadable, and indecipherable (i.e., secured Protected Health Information): (1) encryption as described in the Secretary’s guidance and determined by the National Institute of Standard and Technology to meet the standards described in such guidance, or (2) destruction, in accordance with the procedures identified in the Secretary’s guidance, of the media on which the Protected Health Information was stored or recorded.

III. Privacy Provisions

- A. **Introduction.** Business Associate, on behalf of Covered Entity, performs or assists in the performance of functions and activities that may involve the use, disclosure, receipt

and/or creation of Protected Health Information. The “business associate” provisions of the Privacy Rule govern the terms and conditions under which the Business Associate may use or disclose Protected Health Information. In general, Business Associate agrees and intends to act such that (1) Covered Entity can fulfill its responsibilities under HIPAA; and (2) Business Associate can fulfill its contractual obligations under this Agreement. In addition, Business Associate specifically acknowledges its direct liability for the failure to comply with certain portions of the Privacy Rule as provided under HITECH and the regulations issued thereunder.

B. Permitted Uses and Disclosures by Business Associate.

1. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information (i) to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to any services agreement with the Business Associate, (ii) as permitted or required by this Agreement, and (iii) as Required by Law. Business Associate may disclose Protected Health Information to other business associates of Covered Entity, or to business associates of another covered entity that is part of an organized health care arrangement that includes Covered Entity, to the fullest extent allowed under applicable law.
2. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of its business or to carry out its legal responsibilities.
3. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of its business, if
 - i. The disclosures are required by law, or
 - ii. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will be held confidentially and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to such person, and the person will notify the Business Associate of any instances of which the person is aware in which the confidentiality of the information has been breached.
4. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B).
5. Except as otherwise limited in this Agreement, Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. Section 164.502(j)(1).
6. Business Associate will limit the use, disclosure, or request of Protected Health Information, to the extent practicable, (i) to the Limited Data Set, or (ii) if needed by Business Associate, to the minimum necessary (as determined by Business Associate) to accomplish the intended purpose of such use, disclosure, or request, except to the extent a broader use, disclosure, or request of Protected Health Information is allowed by the Privacy Rule. Business

Associate's ability to satisfy the requirement of this Paragraph III.B.6 by use of the Limited Data Set shall be available until the effective date of subsequent guidance issued by the Secretary regarding what constitutes "minimum necessary," at which time Business Associate will take reasonable efforts to limit the use, disclosure, or request of Protected Health Information to the minimum necessary (as defined by such Secretary's guidance) to accomplish the intended purpose of such use, disclosure, or request, except to the extent a broader use, disclosure, or request of Protected Health Information is allowed by the Privacy Rule.

7. Except as otherwise authorized by the Privacy Rule, Business Associate shall not directly or indirectly receive remuneration (whether financial or nonfinancial) in exchange for any Protected Health Information of a Covered Individual unless Covered Entity has received a valid authorization from the Covered Individual that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Covered Individual. This Paragraph III.B.7 shall apply to exchanges of Protected Health Information occurring on or after the compliance date applicable under the final regulations issued under HITECH that address this restriction.
8. Except as otherwise allowed by the Privacy Rule, Business Associate may not use or disclose Protected Health Information regarding a Covered Individual with respect to a communication about a product or service that encourages recipients of the communication to purchase or use the product or service unless Covered Entity receives no direct or indirect payment in exchange for making such communication and the communication is made to the Covered Individual: (i) to describe a health-related product or service (or payment for such product or service) that is provided by, or included in, the Plan, including communications about the entities participating in a health care provider network or health plan network, replacement of, or enhancements to, the Plan, and health-related products or services available only to Covered Individuals that add value to, but are not part of, the Plan; (ii) for treatment of the Covered Individual; or (iii) for case management or care coordination for the Covered Individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the Covered Individual. Notwithstanding the foregoing, Business Associate may use or disclose Protected Health Information regarding a Covered Individual with respect to a communication about a product or service that encourages recipients of the communication to purchase or use the product or service if the communication relates to a prescription drug that is currently being prescribed for a Covered Individual and any financial remuneration received by Covered Entity in exchange for making the communication is reasonably related to Covered Entity's cost of making the communication. This Paragraph III.B.8 shall apply to disclosures of Protected Health Information occurring on or after the compliance date applicable under the final regulations issued under HITECH that address this restriction.

- C. **Limitations on Business Associate's Uses and Disclosures.** With respect to Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity, Business Associate will not use or further disclose the Protected Health Information other than as permitted or required by this Agreement (including, but not limited to, any restrictions described in Section III.E.4) or as Required by Law.

- D. **Additional Obligations of Business Associate.** Except as otherwise specified in this agreement, the provisions of this Paragraph III.E.4.. apply only to Protected Health Information that Business Associate creates or receives, maintains, or transmits on behalf of Covered Entity.
1. **Safeguards.** Business Associate will use appropriate safeguards to prevent the improper use of, disclosure of, and tampering with Protected Health Information and to reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information.
 2. **Reporting and Mitigation.** Business Associate will report to Covered Entity any acquisition, access, use, or disclosure of Protected Health Information of which Business Associate becomes aware, or that is reported to Business Associate by an agent or Subcontractor, that is in violation of this Agreement. Such report shall be made within ten (10) business days of its discovery (as that term is defined in 45 C.F.R. Section 164.410(a)(2)) by Business Associate. Business Associate agrees to promptly mitigate, to the extent practicable, any harmful effect that is known to Business Associate of an acquisition, access, use, or disclosure in violation of this Agreement. This obligation includes, but is not limited to, any acquisition, access, use, or disclosure of Unsecured Protected Health Information that may constitute a Breach. The determination of whether a Breach has occurred, and of the resultant action, shall be the responsibility of Covered Entity.
 3. **Agents and Subcontractors.** Business Associate will enter into a written contract with any agent or Subcontractor who creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate that requires such agent or Subcontractor to comply with the same restrictions and conditions that apply by and through this Agreement to Business Associate with respect to such information.
 4. **Access to Protected Health Information.** Within fifteen (15) days of a request by Covered Entity for access to Protected Health Information about a Covered Individual, Business Associate shall make available to Covered Entity or, as directed by Covered Entity, a Covered Individual such Protected Health Information contained in a Designated Record Set. Effective September 23, 2013, if the Protected Health Information requested by Covered Entity is maintained in a Designated Record Set electronically, Business Associate shall make available, within the time period specified above, a copy of such information in the electronic form and format specified by Covered Entity, provided such information is readily producible in such form and format. If the information is not readily producible in such form and format, Business Associate shall make the information available in a readable electronic form and format as agreed to by the parties. In the event any Covered Individual requests access to Protected Health Information directly from Business Associate, Business Associate shall within five (5) days forward such request to Covered Entity. Notwithstanding anything herein to the contrary, Covered Entity shall be ultimately responsible for providing access to the requested Protected Health Information or making the determination to deny access to requested Protected Health Information.
 5. **Amendment of Protected Health Information.** Within fifteen (15) days of receipt of a request from Covered Entity or a Covered Individual for the

amendment of Protected Health Information or a record regarding a Covered Individual contained in a Designated Record Set, Business Associate shall (i) provide such information to Covered Entity for amendment, and (ii) incorporate any such amendments in the Protected Health Information as required by 45 C.F.R. Section 164.526. It shall be Covered Entity's responsibility to promptly notify Business Associate of the request for an amendment. Notwithstanding anything herein to the contrary, Covered Entity shall be ultimately responsible for determining whether the requested amendment shall be made and, if the request is denied, in whole or in part, complying with 45 C.F.R. Section 164.526.

6. **Disclosure Accounting.** Business Associate agrees to track such disclosures of Protected Health Information and information related to such disclosures as is necessary to enable Covered Entity to respond to a request by a Covered Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. Section 164.528. Within fifteen (15) days of receipt of notice from Covered Entity that it has received a request for an accounting of disclosures of Protected Health Information regarding a Covered Individual, Business Associate shall make available to Covered Entity such information as is in Business Associate's possession and is required for Covered Entity to make the accounting required by 45 C.F.R. Section 164.528. At a minimum, Business Associate shall provide Covered Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and, (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this section and applicable law. It shall be Covered Entity's responsibility to promptly notify Business Associate of the request for an accounting, and to prepare and deliver any such accounting requested. In addition to the forgoing, Business Associate shall track other disclosures and/or make available to Covered Entity such information as is necessary for Covered Entity to comply with any additional accounting requirements effective as of the compliance date applicable under final regulations implementing such requirements. Notwithstanding anything herein to the contrary, Covered Entity shall be ultimately responsible for providing the disclosure accounting to the Covered Individual.
7. **Access to Business Associate's Internal Records.** Business Associate shall make its internal practices, books, and records 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 Covered Entity or the Secretary, for the purposes of the Secretary's determining compliance with HIPAA for Covered Entity and/or Business Associate.
8. **Electronic Transactions.** In the event the Business Associate transmits or receives any Covered Electronic Transaction on behalf of Covered Entity, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent Required by Law, and shall ensure that any agents and Subcontractors that assist Business Associate in conducting Covered Electronic Transactions on behalf of Covered Entity agree in writing to comply with the Standards for Electronic Transactions Rule to the extent Required by Law.

E. Obligations and Rights of Covered Entity.

1. **Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. Section 164.520, as well as any changes to such notice.
2. **Requests by Covered Entity.** Covered Entity shall not request or direct 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. This includes, but is not limited to, requests or directions for disclosure of Protected Health Information to the Plan sponsor in a capacity other than acting on behalf of the Plan as Covered Entity. To the extent a dispute or difference of opinion exists between the Business Associate and Covered Entity regarding whether a use or disclosure is permissible, Business Associate may disclose the Protected Health Information under objection pursuant to the specific, written direction of Covered Entity. Any disclosures made pursuant to such specific, written direction shall be subject to the indemnification provisions of the Agreement.
3. **Changes in Permission.** 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 or disclosure of Protected Health Information.
4. **Restrictions.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information to which Covered Entity has agreed in accordance with 45 C.F.R. Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information. Such restrictions include, but are not limited to, a Covered Individual's request not to disclose Protected Health Information for purposes of payment or health care operations where the Protected Health Information relates solely to a health item or service for which the health care provider has been paid in full out-of-pocket by, or on behalf of, the Covered Individual.
5. **Agreement Breaches by Business Associate.** If Covered Entity obtains knowledge of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Agreement, Covered Entity will take reasonable steps to cure such breach or end such violation. If Covered Entity cannot successfully cure the breach or end the violation, Covered Entity shall terminate the Agreement in accordance with Section VI.B or, if feasible.

IV. Electronic Security Provisions

- A. **Introduction.** This section applies where Business Associate, on behalf of Covered Entity, performs or assists in the performance of functions and activities that may involve the creation, maintenance, receipt, or transmission of Electronic Protected Health Information. This Article IV along with the other sections of the Business Associate Agreement are (1) intended to meet the requirements of the "business associate" provisions of Security Rule, and (2) govern the terms and conditions under which the Business Associate may create, maintain, receive, and transmit Electronic Protected Health Information on behalf of Covered Entity. In general, Business Associate agrees and intends to act such that (1) Covered Entity can fulfill its responsibilities under HIPAA;

(2) Business Associate can fulfill its responsibilities under HIPAA; and (3) Business Associate can fulfill its contractual obligations under this Agreement.

B. Obligations of Business Associate. In accordance with the Security Rule, Business Associate agrees to:

1. Conduct a security risk assessment (in accordance with 45 C.F.R. Section 164.308(a)(1)(ii)(A)) and adopt and implement policies and procedures designed to ensure compliance with the Security Rule and this Agreement including, but not limited to, identifying a security officer and training personnel. This Paragraph IV.B.1 shall be effective as of the compliance date applicable under the final regulations issued under HITECH that address this requirement.
2. Implement administrative, physical and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that Business Associate creates, maintains, receives, or transmits on behalf of Covered Entity;
3. Report to Covered Entity any Security Incident of which Business Associate becomes aware within ten (10) business days of its discovery by the Business Associate;
4. Promptly mitigate, to the extent practicable, any harmful effect of a Security Incident that is known to Business Associate; and
5. Enter into a written contract with any agent or Subcontractor to whom Business Associate provides Electronic Protected Health Information that requires such agent or Subcontractor to comply with the same restrictions and conditions that apply under this Article IV to Business Associate, including, but not limited to, implementing reasonable and appropriate safeguards to protect such information.

C. Obligations of Covered Entity. Covered Entity shall not request or direct Business Associate to create, maintain, receive, or transmit Electronic Protected Health Information in any manner that would not be permissible under the Security Rule.

V. Breach Notification Requirements

If Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses Unsecured Protected Health Information, Business Associate shall notify Covered Entity of a Breach of such Unsecured Protected Health Information without unreasonable delay, but no later than sixty (60) days following discovery of the Breach. Such notice shall include an identification of each Covered Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach and any other available information needed by Covered Entity to enable it to comply with its notification obligations under the Privacy Rule and Security Rule. For purposes of this Article V, a Breach is deemed to have been discovered by Business Associate upon the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to Business Associate (including any person, other than the individual committing the Breach, that is an employee, officer or agent of Business Associate (determined in accordance with the Federal common law of agency)).

VI. Term and Termination

- A. **Term.** The Term of this Agreement will begin and become effective on the effective date of the Administration Agreement or, if later, the compliance date applicable to Covered Entity under the Privacy Rule, and shall terminate when all of the PHI created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Article VI.
- B. **Termination.** In the event that a party (the “non-breaching party”) discovers and determines that the other party (the “breaching party”) materially breached or violated any of its obligations under this Agreement, the non-breaching party will notify the breaching party of such breach in writing and may immediately terminate the Agreement upon notice to the breaching party or may provide the breaching party with an opportunity to take reasonable steps to cure the breach or end the violation, as applicable, within a mutually agreed upon period of time. If the breaching party's attempts to cure the breach or end the violation are unsuccessful within that period, without limiting the rights of the parties under the Agreement, the non-breaching party may immediately terminate the Agreement upon notice to the breaching party.
- C. **Effect of Relationship Termination.**
1. Except as provided in paragraphs (2) and/or (3) of this sub-section, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information created or received by it on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of Business Associate and/or its subcontractors or agents. Business Associate will not retain any copies of Protected Health Information.
 2. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate will notify Covered Entity of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible, Business Associate will 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..
 3. Should the Covered Entity notify Business Associate that the information necessary to comply with the recordkeeping requirements under other applicable law including, but not limited to, the Employee Retirement Income Security Act of 1974 (“ERISA”), includes the Protected Health Information., Business Associate shall return or provide to Covered Entity such information, including Protected Health Information

VII. General Provisions

- A. **Regulatory References.** A 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, and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

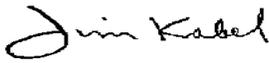
- C. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Business Associate and Covered Entity to comply with the Privacy Rule and the Security Rule.
- D. **Survival.** The respective rights and obligations of Business Associate and the Covered Entity shall survive the termination of this Agreement and any related services agreement.
- E. **Indemnity.** Business Associate will indemnify and hold harmless Covered Entity and Covered Entity's affiliates, officers, directors, employees or agents from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of Protected Health Information. or other breach of this Agreement by such party or any subcontractor, agent, person or entity under such party's control.
- F. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto, any rights obligations, or liabilities whatsoever.
- G. **Conformance with Law.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the parties to comply with the requirements of HIPAA as they apply to each party..
- H. **Action.** For purposes of this Agreement, whenever action is required by a party to this Agreement, such action must be taken by a person or persons with authority to act on behalf of such party to this Agreement.
- I. **Governing Law.** This Agreement shall be governed by the law of Minnesota, except to the extent preempted by federal law.
- J. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- K. **Notices.** All notices and communications required by this Agreement shall be in writing. Such notices and communications shall be given in one of the following forms: (i) by delivery in person, (ii) by a nationally-recognized, next-day courier service, (iii) by first-class, registered or certified mail, postage prepaid; or (iv) by electronic mail to the address that each party specifies in writing.
- L. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral, with regard to this same subject matter. Notwithstanding the foregoing, this Agreement is intended to supplement (rather than supersede) the agreement between Business Associate and the sponsor of the Plan related to the services that Business Associate provides with respect to administration of the Plan.
- M. **Counterparts.** This Agreement may be executed in counterparts, each of which so executed shall be construed to be an original, but all of which together shall constitute

one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart. This Agreement and any amendment or modification may not be denied legal effect or enforceability solely because it is in electronic form, or because an electronic signature or electronic record was used in its formation

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below.

Business Associate: Kabel Business Services

This 7th day of December 2015

By: 

on behalf of the Business Associate.

Print Name: Jim Kabel

Title: President

Covered Entity: City of Norwalk

This ____ day of _____, 201__

By: _____

on behalf of the Covered Entity.

Print Name: _____

Title: _____

**CONTINUATION OF COVERAGE
ADMINISTRATION AGREEMENT
Effective January 1, 2016**

between

**Kabel Business Services (“Continuation Administrator”)
and
City of Norwalk (“Sponsoring Employer” and “Plan Administrator”)**

WHEREAS, Sponsoring Employer has established and maintains certain benefit plans (“Plans”) some or all of which are welfare benefit plan(s) within the meaning of the Employee Retirement Income Security Act of 1974 (“ERISA”) that may include group health, group vision, group hearing, group pharmacy, medical reimbursement, health reimbursement arrangement (“HRA”), and/or group dental plans; and

WHEREAS, some or all of these Plans are required to provide continuation coverage under applicable law; and

WHEREAS, Kabel Business Services has expertise, experience and resources available to fulfill certain administrative responsibilities related to the Plans; and

WHEREAS, Sponsoring Employer and Plan Administrator desire that Kabel Business Services furnish certain services described in this Agreement in the operation and administration of the Plans;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and the exhibits and addenda, if any, attached hereto, Sponsoring Employer, Plan Administrator, and Kabel Business Services hereby agree as follows:

I. Continuation Administrator Responsibilities

- A. **Continuation Coverage Administration.** Kabel Business Services shall provide services with respect to Continuation Coverage under the Plan as described in this Article I. Kabel Business Services will not provide any services regarding administration of the Plan, including, but not limited to, administration of Continuation Coverage, unless such service is specifically described in this Article I or is required under another agreement among the Sponsoring Employer, Plan Administrator, and Kabel Business Services.
- B. **Account Servicing and Employee Communication.** Kabel Business Services shall provide account management services, including an assigned account representative. Kabel Business Services shall provide general Administrative Services to assist persons with general information about Continuation Coverage under the Plan and answer routine questions from persons concerning coverage status, complaint administration, and other inquiries related to Continuation Coverage under the Plan. Kabel Business Services shall notify Sponsoring Employer and Plan Administrator of any change in the individual or individuals assigned as account representatives within five (5) business days of such change.

- C. **General Notices.** If provided in Exhibit B, Kabel Business Services shall, based upon information provided by Sponsoring Employer, issue a general COBRA notice and a notice of privacy practices (if required under HIPAA) to all individuals who enroll in the Plan(s) subject to COBRA coincident with or subsequent to the Effective Date. Kabel Business Services is entitled to rely upon the information provided by Sponsoring Employer and is under no obligation to independently verify such information.
- D. **Continuation Coverage Eligibility, Notification of Right to Elect, and Notification of Unavailability.** Kabel Business Services shall determine if a Qualifying Event has occurred based upon information provided to it by Plan Administrator and/or the person making the claim for Continuation Coverage. Such determinations regarding claims shall be made in accordance with the written terms and conditions of the Plan. With respect to this responsibility, Kabel Business Services is entitled to rely upon the information provided by Plan Administrator and/or person making the claim and is under no obligation to independently verify such information. If Kabel Business Services determines a Qualifying Event has occurred, Kabel Business Services will generate and mail required notification information regarding the individual(s) ability to elect Continuation Coverage and election forms.

If Kabel Business Services determines no Qualifying Event has occurred, or a Covered Individual is not entitled to Continuation Coverage or an extension of Continuation Coverage, Kabel Business Services shall notify any person whose claim for Continuation Coverage is denied of the reasons for the denial and of the person's rights, if any, to have the denial reviewed in accordance with the terms and provisions of the Plan. The notification and review will be in a manner agreed upon by Plan Administrator and Kabel Business Services. Kabel Business Services will refer to Plan Administrator any claim or class of claims specified in writing by Plan Administrator as well as any claim that is disputed after the initial denial. Plan Administrator shall have final discretionary authority to make all determinations regarding Continuation Coverage under the Plan.

Notices described herein will be provided based upon the address information provided by Plan Administrator.

- E. **Reinstatement.** Provided the Qualified Beneficiary elects Continuation Coverage and pays any required premiums within the timeframes described in the election notification, if provided in Exhibit B, Kabel Business Services shall complete and submit any required documentation to insurance carriers and/or third party services providers regarding reinstatement of the coverage for Continuation Coverage purposes.
- F. **Termination/Cancellation of Continuation Coverage.** Except as specifically noted below, if provided in Exhibit B, Kabel Business Services shall complete and submit any required documentation to insurance carriers and/or third party services providers regarding termination of a Continuation Participant's Continuation Coverage, including, but not limited to, termination due to expiration of the required continuation period or failure to timely pay premiums. Kabel Business Services shall also provide any required notification of the cessation of Continuation Coverage to impacted Continuation Participants.
- G. **Continuation Payments.** Kabel Business Services shall collect payments for Continuation Coverage and deposit them in an account owned by Kabel Business Services. If a Continuation Participant makes a payment for Continuation Coverage directly to the Sponsoring Employer, Sponsoring Employer shall forward the entire premium payment to Kabel Business Services within one (1) week of receipt by the

Sponsoring Employer. On a weekly basis, Kabel Business Services shall forward Continuation Coverage payments collected by Kabel Business Services to Sponsoring Employer. In addition, Kabel Business Services may retain any interest earned on deposits (i.e., float) as additional compensation for its services hereunder. Kabel Business Services shall also notify Continuation Participants of any change in the premiums for the Continuation Coverage.

- H. **Insignificant Shortfall.** Unless provided otherwise in Exhibit B, amounts less than the entire cost of Continuation Coverage shall be accepted as payment in full if (1) timely paid; and (2) within the lesser of (a) \$50; or (b) ten percent (10%), of the actual amount due. Any deviations from these criteria or the criteria described in Exhibit B shall be at the direction of Plan Administrator; Kabel Business Services shall be entitled to rely on the direction of Plan Administrator. If indicated in Exhibit B, Kabel Business Services shall also provide notification of insignificant shortfalls in payments.
- I. **Late Premium Payments.** Kabel Business Services shall not accept premium payments for Continuation Coverage that are not made in a Timely manner. If a Continuation Participant fails to make a premium payment for Continuation Coverage in a Timely manner, Kabel Business Services shall terminate the Continuation Coverage in accordance with Article I.F. Notwithstanding the foregoing, if Plan Administrator directs Kabel Business Services to accept a premium payment that has not been made in a Timely manner, Kabel Business Services may follow such direction, provided that Plan Administrator shall be solely responsible for such decision and such decision shall be subject to Plan Administrator's indemnification obligations found in Article IV.C.
- J. **Open Enrollment.** If provided in Exhibit B, Kabel Business Services shall distribute annual enrollment materials to Continuation Participants during the applicable annual open enrollment period and answer questions from Continuation Participants regarding open enrollment. At the conclusion of the open enrollment period, Kabel Business Services shall provide to the Sponsoring Employer and the applicable insurance carriers and/or third party service providers enrollment and/or election information regarding the Continuation Participants. Sponsoring Employer shall provide to Kabel Business Services all information necessary to allow Continuation Participants to participate in open enrollment and Kabel Business Services is entitled to rely upon the information provided by Sponsoring Employer and is under no obligation to independently verify such information.
- K. **Reports.** If mutually agreed upon by the parties, reports shall be delivered to Sponsoring Employer and Plan Administrator within thirty (30) days following the end of the applicable reporting period.
- L. **Administrative Materials.** At the direction of Sponsoring Employer and Plan Administrator, Kabel Business Services shall prepare draft documentation relating to Continuation Coverage under the Plan, including, but not limited to, the initial general notice of rights, election forms, notice of rights following a qualifying event, and various administrative forms. Plan Administrator shall finalize and approve for use the administrative documents. Unless mutually agreed otherwise, such finalization shall be accomplished prior to the use or distribution of such documents.
- M. **Compliance with Applicable Law.** Kabel Business Services shall comply with federal and state laws and regulations applicable to Kabel Business Services' responsibilities under this Agreement.

- N. **Other.** Kabel Business Services shall also provide custom services, if any, as described in Exhibit B.
- O. **Excise Tax Reporting and Payment.** Unless required by applicable law, Kabel Business Services shall not be responsible for filing IRS Form 8928 and/or paying the excise tax imposed by Section 4980B of the Code with respect to the services Kabel Business Services provides under this Addendum.
- P. **HIPAA Portability.** Kabel Business Services shall not provide any services related to HIPAA portability compliance including, but not limited to, providing certificates of creditable coverage to Covered Individuals.
- Q. **Prior Administration.** If a Plan existed prior to the Effective Date, Kabel Business Services shall have no responsibility to audit or review the prior administration for compliance with the Plan and applicable law. If, in the course of providing Administrative Services to the Plan, Kabel Business Services discovers an error that occurred prior to the Effective Date, Kabel Business Services will promptly notify Employer and Plan Administrator of such error. Employer and Plan Administrator shall be solely responsible for determining whether, and in what manner, such error shall be addressed. Upon request, Kabel Business Services may assist Employer and Plan Administrator with correcting such error, provided that Employer and Plan Administrator agree to pay any additional fees charged by Kabel Business Services pursuant to Article II.B. Notwithstanding anything herein to the contrary, Kabel Business Services shall have no liability for the failure to discover errors in administration of the Plan occurring prior to the Effective Date.

II. Duties of Sponsoring Employer and Plan Administrator

- A. **Establishment & Plan Maintenance.** Sponsoring Employer shall establish and maintain the Plan. Plan Administrator shall be responsible for the operation and administration of the Plan. In accordance with this Agreement, Kabel Business Services shall provide Administrative Services to Sponsoring Employer and Plan Administrator in connection with the operation and administration of the Continuation Coverage under the Plan.
- B. **Payment of Administrative Services Fees.** In consideration of Kabel Business Services' provision of services described in this Agreement, the Plan or Sponsoring Employer shall pay Kabel Business Services' administrative fees as described in Exhibit B. All such fees are due and payable immediately upon receipt of an invoice. Any failure to remit any such fees within thirty (30) days may, at Kabel Business Services' option, result in Kabel Business Services' (1) suspension of performance of its services under this Agreement until such time as such fees are paid; or (2) termination of this Agreement. The fees described in Exhibit B shall be in addition to additional compensation provided to Kabel Business Services for its services hereunder, including the two (2) percent administrative fee and the float described in Article I.G. In the event additional services that are not part of the normal Administrative Services contemplated by this Agreement, or chosen by Sponsoring Employer on Exhibit B, are required, Kabel Business Services may charge the Sponsoring Employer an additional fee commensurate with the additional services provided. Kabel Business Services will inform the Sponsoring Employer of the amount of the additional fee in advance of conducting the additional services.
- C. **Regulatory Compliance.** Sponsoring Employer and Plan Administrator shall be responsible for compliance with applicable laws and regulations pertaining to the Plan.

Sponsoring Employer and Plan Administrator shall be responsible for any governmental or regulatory charges, including, but not limited to, premium taxes, provider surcharges and/or taxes, insolvency find fees, guarantee find fees, user fees, licensing fees or other charges resulting from Sponsoring Employer's establishment and operation of the Plan. This provision does not relieve Kabel Business Services from any statutory or agency requirements placed directly on it as a result of performing services under this Agreement.

- D. **Legal Obligations.** Sponsoring Employer or Plan Administrator shall possess ultimate responsibility and authority for the operation of the Plans and for their compliance with all applicable laws and regulations pursuant to the provisions of the Plans.
- E. **Provision of Relevant Information.** Sponsoring Employer shall provide to Kabel Business Services all relevant information, as determined by Kabel Business Services, necessary for Kabel Business Services to perform the Administrative Services. Sponsoring Employer shall cooperate with Kabel Business Services periodic requests to provide and reconcile information regarding the number of individuals upon which payment is based. Within ten (10) days following the date on which Kabel Business Services begins to provide services to Sponsoring Employer with respect to Continuation Coverage, Sponsoring Employer shall provide to Kabel Business Services a list of all Continuation Participants and all Qualified Beneficiaries who have not yet become Continuation Participants and the dates on which: (i) such individuals experienced Qualifying Events; (ii) such individuals' coverage under the Plan(s) ended; (iii) such individuals were provided an election notice, if any; and (iv) such individuals elected Continuation Coverage, if they have done so. Kabel Business Services is entitled to rely upon all information provided by Sponsoring Employer and is under no obligation to independently verify such information.
- F. **Late Notification to Continuation Administrator.** Kabel Business Services' responsibilities under this Agreement are, in some cases, triggered upon notification by Sponsoring Employer and/or Plan Administrator as described above. If such notification is not made timely, Kabel Business Services shall use best efforts to quickly perform its responsibilities. However, ultimate responsibility for any consequences, damages, penalties, and the like attributable in whole or in part to the late notification to Kabel Business Services remain with Sponsoring Employer and Plan Administrator. For purposes of this provision, "timely" refers to a period of time specified in this Agreement or, if not specified, the period of time reasonably sufficient for Kabel Business Services to perform its responsibilities within the time period required under applicable state and/or federal law.
- G. **Review of Reports.** Plan Administrator shall review reports made available by Kabel Business Services and shall notify Kabel Business Services of any errors or omissions in the reports within thirty (30) days of their receipt. For purposes of this Agreement, a report is deemed received on the earlier of: (1) the date on which Kabel Business Services notifies Plan Administrator of the report's availability on Kabel Business Services' website; or (2) the date on which the report is sent by Kabel Business Services to Plan Administrator. If Plan Administrator does not notify Kabel Business Services of any errors or omissions within such thirty (30) day period, Plan Administrator shall be deemed to have approved the accuracy of the reports and Kabel Business Services shall be released and relieved of all liability, and shall be indemnified by Plan Administrator, for any actions taken pursuant to this Agreement based upon the information contained in the reports. By way of illustration, and without limiting the generality of the foregoing, under this provision Plan Administrator shall be responsible for matching information received from

the insurance carriers and/or third party service providers regarding individuals covered under the Plan to the information contained in Kabel Business Services' reports and for notifying Kabel Business Services of any discrepancies. If Plan Administrator does find an error or discrepancy and notifies Kabel Business Services of such within the thirty (30) day period provided above, Kabel Business Services will take immediate steps to address the matter. Notwithstanding anything herein to the contrary, Kabel Business Services shall not be liable for any error or omission of an insurance carrier and/or third party service provider with respect to reinstating or terminating a Qualified Beneficiary's or COBRA Participant's coverage if Kabel Business Services has fulfilled its responsibilities under Articles I.E. and I.F. hereof.

- H. **Cost of Continuation Coverage.** Sponsoring Employer and/or Plan Administrator shall provide Kabel Business Services with the Applicable Premium calculations for Continuation Coverage under the Plan at least thirty (30) days prior to the start of the twelve-month period to which they relate. Kabel Business Services shall be entitled to rely on such information. Unless Plan Administrator provides written direction otherwise, Kabel Business Services shall charge COBRA Participants the maximum premium for COBRA Coverage allowed under applicable law. If Employer and/or Plan Administrator fail to timely notify Kabel Business Services of the Applicable Premium, Kabel Business Services shall continue to charge premiums for the COBRA Coverage based upon the Applicable Premium for the prior twelve-month period. If Employer and/or Plan Administrator notify Kabel Business Services of a new Applicable Premium for an applicable twelve-month period after the deadline provided above, Kabel Business Services will begin charging COBRA Coverage premiums based upon the new Applicable Premium beginning with the first month occurring at least thirty (30) days following Kabel Business Services' receipt of such information from Employer and/or Plan Administrator. Kabel Business Services shall be released and relieved of all liability related to, and shall be indemnified by Employer and Plan Administrator with respect to, premium changes made after the start of the applicable twelve-month period as a result of Employer's and/or Plan Administrator's failure to comply with the notice requirement contained herein.

- I. **Continuation Coverage Documents.** Sponsoring Employer and Plan Administrator shall provide direction to Kabel Business Services, as necessary, regarding Continuation Coverage documentation. Sponsoring Employer and Plan Administrator shall approve all such materials within thirty (30) days following delivery by Kabel Business Services, unless such deadline is extended by mutual agreement of all parties. Sponsoring Employer and Plan Administrator's failure to object within such time period (including any agreed upon extension period) shall constitute approval. Sponsoring Employer and Plan Administrator shall be solely responsible for the content of Continuation Coverage documentation it has been provided for review and approval.

- J. **Status of Continuation Administrator.** Sponsoring Employer shall not (1) name Kabel Business Services as Plan Administrator, Sponsoring Employer or a Named Fiduciary in any documents, including the Plan document, with respect to the Continuation Coverage under the Plan; nor (2) hold out to other parties, including Continuation Participants, that Kabel Business Services serves in any of the foregoing capacities. In addition, Kabel Business Services does not intend to assume any of the administrative duties or responsibilities commensurate with such designations.

- K. **Alternative Coverage.** Sponsoring Employer and Plan Administrator must notify Kabel Business Services of any Alternative Coverage that impacts the services that would otherwise be provided by Kabel Business Services under this Agreement. If such Alternative Coverage increases the amount of work Kabel Business Services must perform to comply with this Agreement, Kabel Business Services reserves the right to charge additional administrative service fees hereunder as agreed by the parties. Kabel Business Services shall be entitled to rely on the information provided by Sponsoring Employer and Plan Administrator.
- L. **Continuation Coverage Determinations.** Through this Agreement, Plan Administrator delegates to Kabel Business Services authority to make the described determinations related to Continuation Coverage under the Plan. If Plan Administrator disagrees with Kabel Business Services on a particular determination Plan Administrator shall immediately notify Kabel Business Services, in writing, of such disagreement and direct Kabel Business Services regarding the situation. Plan Administrator shall be solely responsible for the final initial determination on such claim, which shall be communicated in writing to Kabel Business Services. Kabel Business Services shall be entitled to rely on the final initial determination made by Plan Administrator.

As between Kabel Business Services and Plan Administrator, Plan Administrator is responsible for the final decision upon review of disputed eligibility and coverage issues, including determinations with respect to Continuation Coverage. Upon receipt of applicable information and documentation from Kabel Business Services, Plan Administrator shall notify Kabel Business Services in writing of its final decision upon review of disputed eligibility and coverage issues.

- M. **Family & Medical Leave Act of 1993 ("FMLA").** Sponsoring Employer shall make determinations regarding FMLA. Kabel Business Services shall not make determinations regarding FMLA. Furthermore, Kabel Business Services shall be entitled to rely upon the information provided by Sponsoring Employer and is under no obligation to independently verify such information.
- N. **Excise Tax Reporting and Payment.** Employer and Plan Administrator are solely responsible for: (i) determining whether IRS Form 8928 must be filed for the purpose of reporting a violation of COBRA; (ii) preparing and filing Form 8928 (if necessary); and (iii) paying any excise tax imposed by Section 4980B of the Code. Notwithstanding the foregoing, upon request, Kabel Business Services may assist Employer and Plan Administrator with its responsibilities under this paragraph.
- O. **Qualified Medical Child Support Orders ("QMCSO").** Plan Administrator shall be responsible for all aspects of compliance with Section 609(a) of ERISA regarding qualified medical child support orders ("QMCSO"), including, but not limited to establishing QMCSO procedures and determining whether a medical child support order is "qualified." Plan Administrator shall provide notice to Kabel Business Services of any Covered Individuals who cease to be covered under the Plan by virtue of the expiration of a QMCSO. Kabel Business Services shall be entitled to rely upon the information provided by Plan Administrator pertaining to QMCSOs.

III. Records & Information

- A. **Maintenance and Access.** Sponsoring Employer, Plan Administrator and Kabel Business Services shall maintain adequate records relating to the terms and operation of the Plans for at least the Plan Year to which the records relate and for an eight (8) year

period thereafter. Each party shall have access to the records relating to the Plans maintained by the other party during normal business hours and upon reasonable notice and request and subject to applicable laws and regulations. The parties shall maintain the confidentiality of any information relating to Participants and the Plans in accordance with applicable laws and regulations. At the conclusion of the period for which records are required to be kept under this provision and prior to any modification, destruction or disposal of any records, Kabel Business Services shall provide Sponsoring Employer and Plan Administrator an opportunity to review the records and obtain copies of any such records. All costs associated with such inspection and copying of records will be paid by Sponsoring Employer.

- B. **Record Use.** Kabel Business Services, Sponsoring Employer and Plan Administrator agree that the medical records, names, addresses, telephone numbers, Social Security numbers and other personal information relating to Participants, which Kabel Business Services may obtain as a result of performing Administrative Services may be collected, maintained and used by Kabel Business Services and Plan Administrator as necessary to administer the Plan. Kabel Business Services and Plan Administrator may use patient specific and individually identifiable information, as necessary to properly administer the Plan, to defend any claim related to the Plan or to the provision of services under this Agreement, or as otherwise may be permitted by state or federal law. All parties agree that such information shall be considered confidential and protected as required under applicable law.
- C. **Confidential Business Information.** Kabel Business Services, Sponsoring Employer and Plan Administrator shall each take all necessary steps to protect the other party's confidential business information. Such information shall not be disclosed to third parties without the express written consent of the other party unless required by law or court order.
- D. **Use of Continuation Administrator's Confidential and Proprietary Information.** The parties agree that Kabel Business Services' "service package" is proprietary. Sponsoring Employer and Plan Administrator agree not to use this information other than for the specific purposes of carrying out the terms of this Agreement, and shall disclose it only to its officers, directors, employees or contractors with a specific need to know.
- E. **Transfer of Records.** When this Agreement ends, Kabel Business Services may transfer to Sponsoring Employer, Plan Administrator and/or any successor administrator those records Kabel Business Services determines are reasonably necessary to effectuate a smooth transition of administration of the Plan and any other records Kabel Business Services possesses that relate to the Plan. Kabel Business Services intends that this transfer of records will satisfy its obligation to maintain such records as described above. Kabel Business Services shall provide Plan Administrator an opportunity to review the records and obtain copies of any such records in addition to the records Kabel Business Services has identified as necessary for a smooth transition or otherwise transferred. The details of such transfer, including but not limited to the means, method and timing, shall be agreed to by the parties. All costs associated with such a record review and transfer will be paid by Sponsoring Employer.
- F. **HIPAA Business Associate.** Kabel Business Services acknowledges its role as a business associate for purposes of the privacy and security standards under HIPAA. Exhibit C reflects the business associate contractual requirements.

IV. Indemnification and Limitation of Liability

- A. **No Guarantee of Benefits.** Kabel Business Services does not assume any responsibility, risk, liability or obligation for the general policy direction of the Plan, the adequacy of funding thereof, or any act or omission or breach of duty by parties other than Kabel Business Services. Kabel Business Services is not and shall not be deemed a guarantor with respect to any benefits payable under the Plan.
- B. **Indemnification for Design/Interpretation.** Kabel Business Services is not engaged in the practice of law. The resolution of any legal issues concerning the Plan is the responsibility of Plan Administrator and/or Employer and their legal counsel. Plan Administrator and Sponsoring Employer shall indemnify, hold harmless, and defend Kabel Business Services from and against any and all liabilities, losses, damages, claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees Kabel Business Services may incur or be asked to pay), arising, directly or indirectly, out of the design and/or interpretation of the Plan, including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees Kabel Business Services may incur or be asked to pay) arising under any state, federal or local law or regulation.
- C. **General Indemnification by Plan Administrator and Sponsoring Employer.** Plan Administrator and Sponsoring Employer shall indemnify, hold harmless, and defend Kabel Business Services and its directors, trustees, officers, employees, and agents from and against any and all liabilities, losses or damages arising out of any claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees Kabel Business Services may incur or be asked to pay), which arise, directly or indirectly, from Plan Administrator's or Employer's act or omission to act in its administration of the Plan, including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees Kabel Business Services may incur or be asked to pay) arising under any law.
- D. **Indemnification for Prior Administration.** If a party other than Kabel Business Services previously provided continuation services to the Plan, Plan Administrator and Sponsoring Employer shall indemnify, hold harmless, and defend Kabel Business Services and its directors, trustees, officers, employees, and agents from and against any and all liabilities, losses or damages arising out of any claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees Kabel Business Services may incur or be asked to pay), which arise, directly or indirectly, from such prior administration, including, but not limited to, any liability, losses, damages, claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees Kabel Business Services may incur or be asked to pay) arising under any law.
- E. **Continuation Administrator's Duty to Indemnify.** Kabel Business Services shall indemnify, hold harmless, and defend Plan Administrator and Sponsoring Employer and their directors, trustees, officers, employees, and agents from and against any and all liabilities, losses or damages arising out of any claims, lawsuits, or causes of action, and any costs and expenses associated therewith (including any attorneys' fees Plan Administrator and Sponsoring Employer may incur or be asked to pay), which arise, directly or indirectly, from Kabel Business Services' act or omission to act in its administration of the Plan, including, but not limited to, any liability, losses, damages,

claims, lawsuits, or causes of action and any costs and expenses associated therewith (including any attorneys' fees Plan Administrator and Sponsoring Employer may incur or be asked to pay) arising under any law.

- F. **Limitation of Liability.** Kabel Business Services shall exercise, in the performance of its duties, reasonable care and shall be liable for loss only when caused by Kabel Business Services' (or Kabel Business Services' subcontractors) negligence, gross negligence, fraud, willful misconduct, criminal conduct or a material breach of this Agreement. Kabel Business Services shall be responsible for direct damages caused by its failure to satisfy its duties hereunder; provided, however, that Kabel Business Services shall not be liable for any incidental or consequential damages caused by its failure to satisfy its duties hereunder. Kabel Business Services shall not be liable for processing that is delayed due to circumstances beyond its reasonable control, including, but not limited to, national, state, or city disaster, acts of God, acts of war, severe weather, or any other circumstances that would affect Kabel Business Services or its software or Internet systems.
- G. **Reliance on Data & Direction.** Notwithstanding any provision of this Agreement to the contrary, Kabel Business Services is not responsible or liable for any acts or omissions made pursuant to any direction, consent or other request reasonably believed by Kabel Business Services to be genuine and from an authorized representative of Sponsoring Employer and Plan Administrator. Kabel Business Services is not responsible or liable for acts or omissions made in reliance on erroneous data provided by Sponsoring Employer or Plan Administrator to the extent Kabel Business Services' acts or omissions are attributable to the erroneous data, or for the failure of Sponsoring Employer or Plan Administrator to perform their obligations under this Agreement. Kabel Business Services is also entitled to rely upon Sponsoring Employer's determination that Sponsoring Employer is an entity subject to ERISA. To the extent Sponsoring Employer or Plan Administrator request special Administrative Services, special arrangements regarding responsibilities, liabilities, indemnification, etc. they shall be described in Exhibit B.

V. Term and Termination

- A. **Term.** This Agreement is effective as of the Effective Date and shall continue for a period of twelve (12) consecutive months and for each twelve (12) consecutive month period thereafter until the termination of this Agreement pursuant to this Article V of the Agreement. Notwithstanding the expiration or termination of this Agreement, the provisions of Articles III, IV, and V shall remain in force.
- B. **Termination.** This Agreement may be terminated by any party by providing at least sixty (60) days written notice of the intention to terminate given to the other party to be effective as of the date provided in such notice.
- C. **Option for Immediate Termination.**
 - 1. A party shall have the option to terminate this Agreement immediately upon the material breach of the terms of this Agreement by the other party, including failure to remit service fees due Kabel Business Services, if such material breach is not corrected within thirty (30) days of receipt of written notice specifying the nature of the breach to the reasonable satisfaction of the non-breaching party.
 - 2. A party shall have the option to terminate this Agreement immediately upon the bankruptcy or insolvency of the other party.

3. A party shall have the option to terminate this Agreement immediately upon the enactment of any law, promulgation of any regulation or action of any state or federal agency or authority which makes or declares illegal the continuance of this Agreement or the performance of any of the services of Kabel Business Services hereunder.
- D. **Post-Termination Obligation.** Unless mutually agreed upon by Sponsoring Employer, Plan Administrator and Kabel Business Services, Kabel Business Services shall not provide Administrative Services following the termination of this Agreement. Kabel Business Services shall forward all Continuation Coverage information, inquiries, elections, etc. to the person or entity designated by Sponsoring Employer and Plan Administrator. Absent such designation, all references shall be made to Sponsoring Employer.

VI. Definitions

The following Definitions shall apply to this Agreement:

- A. **Administrative Services** – means those services relating to the administration of the Plan(s) to be performed by Kabel Business Services as set forth in this Agreement.
- B. **Agreement** – means this Group Health Continuation of Coverage Administration Agreement and any Exhibits attached hereto and any outside agreements specifically incorporated by reference.
- C. **Alternative Coverage** – means non-COBRA coverage offered as an alternative to COBRA, made available to induce a Qualified Beneficiary not to elect COBRA.
- D. **Applicable Premium** – means the cost to the Plan for a period of coverage (for example, one, two or three months) for similarly situated Covered Individuals for whom a Qualifying Event has not occurred.
- E. **Code** – means the Internal Revenue Code of 1986 and regulations thereunder, as amended from time to time.
- F. **COBRA** – means the Consolidated Omnibus Budget Reconciliation Act of 1985 (as it appears in the Code and ERISA) and regulations thereunder, as amended from time to time.
- G. **Continuation Administrator** – means Kabel Business Services (including all authorized representatives of Kabel Business Services), an independent contractor designated to perform certain Administrative Services pursuant to this Agreement with respect to the Plan(s).
- H. **Continuation Coverage** – means the continuation coverage required under COBRA.
- I. **Covered Individual** – means a person properly covered under the Plan to which Kabel Business Services is providing services, including a Participant, the spouse and dependents of the Participant, and (if applicable) the domestic partner or same sex spouse of the Participant covered pursuant to the terms of the Plans.
- J. **Continuation Participant** – means any person receiving Continuation Coverage under the Plan in accordance with the terms and conditions of the Plan and applicable law, including, but not limited, to Qualified Beneficiaries.

- K. **Effective Date** – means the date upon which this Agreement, once fully executed by all parties, is effective, as indicated on page one of this agreement.
- L. **ERISA** – means the Employee Retirement Income Security Act of 1974 and regulations thereunder, as amended from time to time.
- M. **Exhibit** – means the exhibit attached to and incorporated into this Agreement as may be amended from time to time in accordance with Section VII.A.
- N. **Fiduciary** – means Plan Administrator, Sponsoring Employer (as the Named Fiduciary in the Plan), and any other person who satisfies the definition of “fiduciary” under ERISA.
- O. **HIPAA** – means the Health Insurance Portability and Accountability Act of 1996 and regulations thereunder, as amended from time to time.
- P. **Named Fiduciary** – is a term described in Section 402(a)(1) of ERISA that is applicable to the Plans subject to ERISA and means Sponsoring Employer.
- Q. **Participant** – means an employee of the Sponsoring Employer who has become a participant in the Plan pursuant to the terms thereof and those participating in the Plan pursuant to a qualified medical child support order. “Participant” does not include Continuation Participants.
- R. **Plan(s)** – means the benefit plan or plans identified in Exhibit A covered by this Agreement. Plan may also refer to the written plan document requirement under ERISA and/or the Code.
- S. **Plan Administrator** – means Sponsoring Employer.
- T. **Qualified Beneficiary** – means a covered employee or the spouse, former spouse, dependent child or (if applicable) domestic partner or same sex spouse of the covered employee, who has lost group coverage in a Qualifying Event and is entitled to elect Continuation Coverage.
- U. **Qualifying Event** – means the loss of coverage under a group plan on account of one of the specific events described in COBRA, the loss of coverage triggering Continuation Coverage rights under applicable state law, and the loss of coverage triggering Continuation Coverage rights under the terms of the Plan.
- V. **Sponsoring Employer** – means City of Norwalk.
- W. **Timely** – means within the deadline established in the Plan or in the policies and procedures adopted by the Plan Administrator, provided such deadline complies with applicable law.

VII. Miscellaneous

- A. **Agreement Amendment.** This Agreement may be amended only by mutual agreement in writing executed by all parties, except that Kabel Business Services may amend this Agreement to the extent necessary to comply with applicable federal, state or local laws or regulations. Notwithstanding the foregoing, Kabel Business Services may amend Exhibit B to this Agreement by providing to Sponsoring Employer a copy of the amended Exhibit B at least sixty (60) days before it is effective, provided that if Sponsoring Employer provides written notice to Kabel Business Services of its objection to such amendment prior to its effective date, such amendment shall not become effective.

- B. **Notices.** All notices, requests, consents and other communications required or permitted between the parties to this Agreement shall be (1) in writing and delivered personally, or sent by registered or certified mail or nationally recognized overnight carrier, postage prepaid; (2) in writing and sent by facsimile transmission, to the address set forth below, or to such other address set forth in a notice given in the manner herein provided; or (3) sent by e-mail or other electronic means capable of being reduced to writing. All such notices, requests, information or other communications shall be deemed to have been given (i) when delivered if personally delivered; (ii) three business days after having been placed in the mail, if delivered by registered or certified mail; (iii) the business day after having been placed with a nationally recognized overnight carrier, if delivered by nationally recognized overnight carrier; (iv) the first business day after the date received by the electronic modality; and (v) the business day after transmittal by facsimile if transmitted with electronic confirmation of receipt.

If to Sponsoring Employer and Plan Administrator:

City of Norwalk
Contact:
Address:
City:
State:
Email Address:
Telephone:
Fax:

If to Continuation Administrator:

Kabel Business Services
Attn: COBRA Administrator
1454 30th Street Suite #105
West Des Moines, IA 50266
Email address: songt@kabelbiz.com
Telephone: 515-224-9400
Toll Free: 800-300-9691
Fax: 515-224-9256

Upon the occurrence of a change in any of the above address information, each party shall notify the other party(ies) of such change within five (5) business days of the effective date of the change.

- C. **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement is held invalid by a court of law or other tribunal, the invalidity of any provision will not affect any other provision of this Agreement.
- D. **No Waiver of Rights.** Nothing in this Agreement shall be deemed to limit or abrogate any right or remedy available under law. The failure of any party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive any such right or remedy.
- E. **Non-Assumption of Liabilities.** Unless specifically provided in this Agreement, the parties do not assume the existing or future obligations, liabilities or debts of the other party.
- F. **Entire Agreement.** This Agreement shall supersede and replace any and all other agreements between the parties relating to the same subject matter. This Agreement contains the entire agreement and understanding of the parties relating to the subject matter hereof, except as otherwise provided in this Agreement.
- G. **Governing Law.** The Agreement shall be governed by and interpreted in accordance with applicable federal law, including, but not limited to, ERISA. To the extent the federal law does not govern, this Agreement shall be governed by the laws of the State of Iowa and the courts in such state shall have sole and exclusive jurisdiction of any dispute related hereto and arising hereunder.
- H. **Independent Contractors.** Kabel Business Services shall be construed to be acting as an independent contractor and not as an employee of Sponsoring Employer or Plan Administrator. Kabel Business Services, Sponsoring Employer and Plan Administrator shall not have the power or authority to act for or on behalf of, or to bind the other party, except as set forth in this Agreement. Because Kabel Business Services is a corporation and payments made hereunder are not medical payments, withheld income tax of foreign tax, barter exchange transactions, substitute or abandonment's of secured property or cancellation of debt, no Form 1099 is required to be filed with the IRS for payments made pursuant to this Agreement.
- I. **Third Party Beneficiaries.** The obligations of each party to this Agreement shall inure solely to the benefit of the other party(ies). Except as expressly provided in this Agreement, no person or entity is intended to be or shall be construed or deemed to be a third party beneficiary of this Agreement.
- J. **Subcontractors.** Kabel Business Services may hire subcontractors to perform any of the services required of it under this Agreement and to act as its designee for purposes of this Agreement.
- K. **Successors and Assigns.** This Agreement shall be binding on any successors, assigns and subcontractors of the parties authorized under this Agreement.
- L. **Audit Rights.** The parties agree to cooperate in all reasonable audits. Audit fees shall be payable by the party initiating the audit. Audits shall be conducted using procedures mutually agreed upon by the parties. Results of the audit may be shared with the party being audited at the sole discretion of the party initiating the audit.

- M. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- N. **Construction.** The parties represent and warrant that the terms and conditions of this Agreement are the result of negotiations among them and that the construction of this Agreement shall not favor or hurt any party by reason of the extent to which any party or his legal counsel participated in the drafting of this Agreement.
- O. **Material Change in Law.** With the exception of changes described in Article V.C.3., if substantial changes to laws and/or regulations materially affect the rights or responsibilities of any party to this Agreement, the parties to this Agreement agree to enter into negotiations to attempt to adequately respond to such changes. Any such changes must be reflected in a written amendment to this Agreement. If the parties are unable to agree upon an appropriate resolution, a party adversely affected by such changes may terminate this Agreement under Article V.B.
- P. **Force Majeure.** Neither party shall be liable for any delay or failure to perform its obligations under this Agreement arising out of a cause beyond its control or without its fault or negligence. Such causes may include, but are not limited to, fires, floods, and natural disasters.
- Q. **Fidelity Bond.** Kabel Business Services shall obtain a fidelity bond meeting the minimum requirements of ERISA and other applicable law, with respect to any of its employees handling assets of Plan(s) subject to ERISA.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

SPONSORING EMPLOYER

PLAN ADMINISTRATOR

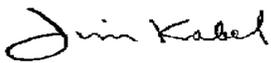
By: _____
 Company Representative
 City of Norwalk

By: _____
 Authorized Representative
 City of Norwalk

Its: _____

Its: _____

CONTINUATION ADMINSTRATOR

By: 
 Authorized Representative of
 Kabel Business Services
 Its: President

LIST OF EXHIBITS

- A Plans and Providers
- B Administrative Fees
- C Business Associate

EXHIBIT A
Plans and Providers

Please provide us with the Carrier and plan names for all the benefits listed below if they are applicable.

Type of Plan	Name of Plan	Carrier or Provider
Group Medical Benefits		
Group Dental Benefits		
Group Vision Benefits		
Flex Medical Expense Plan		
Flex Limited Scope Medical Expense Plan		
HRA Plan		
Employee Assistance Plan		

EXHIBIT B
Administrative Fees

The Plan or Sponsoring Employer shall make payments of administrative service fees in accordance with the following schedule:

One Time Set up Fee (based on a single location)	\$75.00
Includes:	
<ul style="list-style-type: none"> • Initial establishment of the Plan on our software • Initial mailing of General Rights Notices to all covered employees 	
Annual Renewal Fee	\$70.00
Applied to each Plan renewal invoice, beginning with your second Plan Year	
Includes:	
<ul style="list-style-type: none"> • Adjustments to rate tables for all covered health plans • Delivery of open-enrollment forms with complete instructions to any former employee on COBRA 	
Administration Fee (per Benefit Enrolled Participant, per month)	
\$1.25	
Monthly Minimum Administration Fee	\$50.00
Includes:	
<ul style="list-style-type: none"> • Mail Qualifying Event Notifications to Qualified Beneficiaries • Mail General Rights Notices to newly hired covered employees • Process and Adjudicate COBRA Elections • Process Monthly Premium Collections • Issue monthly insurance premium payment to Employers • Toll-free Employer and Qualified Beneficiary support and consultation 	
Qualified Beneficiary Takeover Fee (One-time charge per participant)	
\$35.00	
Includes:	
<ul style="list-style-type: none"> • Audit/Takeover of current and pending COBRA participants • Coordination of collection of premiums from current Qualified Beneficiaries 	
Initial General Rights Notices (Per Letter, one-time charge at take-over)	
\$2.00	
<ul style="list-style-type: none"> • Mail General Rights Notice to each covered employee 	

Administrator Processing Fee

Kabel Business Services will charge and retain a 2% administration fee to COBRA Qualified Beneficiaries where allowed by law.

Retiree Billing (\$5.00 per Enrolled Participant, per month – billed to Retiree)

- Process Monthly Premium Collections
- Issue monthly insurance premium payment to Employers

EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT
[reflecting HITECH under ARRA]

This Exhibit C – Business Associate Agreement (“Agreement”) is entered into by and between City of Norwalk (“Covered Entity”) and Kabel Business Services (“Business Associate”).

I. Purpose

- A. Business Associate is contractually obligated to provide certain services related to one or more “covered entities” as that term is defined and regulated under HIPAA. The parties to this Agreement acknowledge that (1) Business Associate is a “business associate” as that term is defined and regulated under the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”); and (2) Business Associate provides services to one of more “covered entities” as that term is defined and regulated under HIPAA.
- B. This Agreement is intended to constitute a “business associate” agreement between the Plan, as a Covered Entity, and the Business Associate, as required under the privacy and security provisions of HIPAA, as amended. Portions of HIPAA apply directly to Business Associate as provided in the Health Information Technology for Economic and Clinical Health Act (“HITECH”), part of the American Recovery and Reinvestment Act of 2009 (“ARRA”). Business Associate’s obligations under this Agreement may be the same as, or in some cases in addition to, Business Associate’s own obligations under HIPAA as provided in HITECH.

II. Special Definitions

The following definitions are used by this Exhibit C – Business Associate Agreement:

- A. **Agreement** – means this Business Associate Agreement, which is an agreement required under 45 C.F.R. Section 164.314(a)(2) between a Business Associate and a Covered Entity.
- B. **ARRA** – means the American Recovery and Reinvestment Act of 2009.
- C. **Breach** - means the acquisition, access, use, or disclosure of PHI in a manner not permitted by 45 C.F.R. part 164, subpart E which compromises the security or privacy of such information (meaning that it poses a significant risk of financial, reputational, or other harm to the individual). A use or disclosure of PHI that does not include the identifiers listed at 45 C.F.R. § 164.514(e)(2), date of birth, and zip code does not compromise the security or privacy of the PHI. “Breach” does not include: (1) any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Business Associate if such acquisition, access, or use was made in good faith and within the course and scope of the authority and does not result in further use or disclosure in a manner not permitted by 45 C.F.R. part 164, subpart E; (2) any inadvertent disclosure by a person who is authorized to access PHI at a Business Associate to another person authorized to access PHI at the Business Associate, and any such information received as a result of the disclosure is not further used or disclosed in a manner not permitted by 45 C.F.R. part 164, subpart E; or (3) a disclosure of PHI where the Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably be able to retain such information.

- D. **Business Associate** – means a person or entity described in 45 C.F.R. Section 160.103 who performs certain functions on behalf of a Covered Entity.
- E. **Covered Electronic Transactions** – shall have the meaning given to the term “transaction” in 45 C.F.R. Section 160.103.
- F. **Covered Entity** – means the Plan, an entity described in 45 C.F.R. Section 160.103.
- G. **Covered Individual** – means a person who is eligible for payment of certain services or supplies rendered or sold to the person or the person’s eligible dependents under the terms, conditions, limitations, and exclusions of a health benefit program of the Plan.
- H. **Data** – means formalized representation of specific facts or concepts suitable for communication, interpretation, or processing by people or automatic means.
- I. **Data Aggregation** – means, with respect to PHI created or received by Business Associate in its capacity as a business associate (as that term is defined in 45 C.F.R. Section 160.103) of the Plan, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a business associate of another covered entity (as those terms are defined in 45 C.F.R. Section 160.103), to permit data analyses that relate to the health care operations of the respective covered entities.
- J. **Designated Record Set** – means a group of records maintained by or for the Covered Entity that is (1) the medical records and billing records about Individuals maintained by or for a covered health care provider; (2) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for the Covered Entity; or (3) used, in whole or in part, by or for the Covered Entity to make decisions about Individuals. As used herein, the term “Record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used or disseminated by or for the Covered Entity.
- K. **Effective Date** – means January 1, 2016, unless specifically noted otherwise herein.
- L. **Electronic Protected Health Information** – shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. 160.103, limited to the information created, received, or transmitted by Business Associate from or on behalf of Covered Entity.
- M. **HITECH** - means the Health Information Technology for Economic and Clinical Health Act and any accompanying regulations, as the same may be amended from time to time.
- N. **HHS** – means the United States Department of Health and Human Services.
- O. **Including** – means “including but not limited to.”
- P. **Individual** – shall have the same meaning as the term “individual” in 45 C.F.R. Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).
- Q. **Limited Data Set** – shall have the same meaning as the term “limited data set” in 45 C.F.R. Section 164.514(e)(2).

- R. **Plan** – means the “organized health care arrangement” as that term is defined in 45 C.F.R. Section 160.103, consisting of the plans collectively considered the organized health care arrangement.
- S. **Privacy Rule** – means the Standards and Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, subparts A and E and the privacy provisions of HIPAA, as amended.
- T. **Protected Health Information or PHI** – shall have the same meaning as the term “protected health information” in 45 C.F.R. 164.501, limited to the information created, received, or transmitted by Business Associate from or on behalf of Covered Entity protected. Health Information specifically includes Electronic Protected Health Information.
- U. **Provider** – means a hospital or professional practitioner duly certified or licensed to provide health care services to Covered Individuals.
- V. **Required By Law** – shall have the same meaning as the term “required by law” in 45 C.F.R. Section 164.103.
- W. **Secretary** – means the Secretary of the Department of Health and Human Services or his/her designee.
- X. **Security Incident** – shall have the same meaning as the term “security incident” in 45 C.F.R. Section 164.304, unless defined differently in Covered Entity’s policies and procedures for compliance with the Security Rule, which shall be provided to the Business Associate.
- Y. **Security Rule** – means the Security Standards and Implementation Specifications at 45 C.F.R. Part 160 and Part 164, subpart C and the security provisions of HIPAA, as amended.
- Z. **Standards for Electronic Transactions Rule** - means the final regulations issued by HHS concerning standard transactions and code sets under the Administrative Simplification provisions of HIPAA, 45 C.F.R. Part 160 and Part 162.
- AA. **Subcontractor** – means an individual described in 45 C.F.R. Section 160.103.
- BB. **Unsecured Protected Health Information** means Protected Health Information that has not been rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary. As of August 24, 2009, the Secretary has specified the following technologies and methodologies that will render Protected Health Information unusable, unreadable, and indecipherable (i.e., secured Protected Health Information): (1) encryption as described in the Secretary’s guidance and determined by the National Institute of Standard and Technology to meet the standards described in such guidance, or (2) destruction, in accordance with the procedures identified in the Secretary’s guidance, of the media on which the Protected Health Information was stored or recorded.

III. Privacy Provisions

- A. **Introduction.** Business Associate, on behalf of Covered Entity, performs or assists in the performance of functions and activities that may involve the use, disclosure, receipt

and/or creation of Protected Health Information. The “business associate” provisions of the Privacy Rule govern the terms and conditions under which the Business Associate may use or disclose Protected Health Information. In general, Business Associate agrees and intends to act such that (1) Covered Entity can fulfill its responsibilities under HIPAA; and (2) Business Associate can fulfill its contractual obligations under this Agreement. In addition, Business Associate specifically acknowledges its direct liability for the failure to comply with certain portions of the Privacy Rule as provided under HITECH and the regulations issued thereunder.

B. Permitted Uses and Disclosures by Business Associate.

1. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information (i) to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to any services agreement with the Business Associate, (ii) as permitted or required by this Agreement, and (iii) as Required by Law. Business Associate may disclose Protected Health Information to other business associates of Covered Entity, or to business associates of another covered entity that is part of an organized health care arrangement that includes Covered Entity, to the fullest extent allowed under applicable law.
2. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of its business or to carry out its legal responsibilities.
3. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of its business, if
 - i. The disclosures are required by law, or
 - ii. Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will be held confidentially and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to such person, and the person will notify the Business Associate of any instances of which the person is aware in which the confidentiality of the information has been breached.
4. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B).
5. Except as otherwise limited in this Agreement, Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. Section 164.502(j)(1).
6. Business Associate will limit the use, disclosure, or request of Protected Health Information, to the extent practicable, (i) to the Limited Data Set, or (ii) if needed by Business Associate, to the minimum necessary (as determined by Business Associate) to accomplish the intended purpose of such use, disclosure, or request, except to the extent a broader use, disclosure, or request of Protected Health Information is allowed by the Privacy Rule. Business

Associate's ability to satisfy the requirement of this Paragraph III.B.6 by use of the Limited Data Set shall be available until the effective date of subsequent guidance issued by the Secretary regarding what constitutes "minimum necessary," at which time Business Associate will take reasonable efforts to limit the use, disclosure, or request of Protected Health Information to the minimum necessary (as defined by such Secretary's guidance) to accomplish the intended purpose of such use, disclosure, or request, except to the extent a broader use, disclosure, or request of Protected Health Information is allowed by the Privacy Rule.

7. Except as otherwise authorized by the Privacy Rule, Business Associate shall not directly or indirectly receive remuneration (whether financial or nonfinancial) in exchange for any Protected Health Information of a Covered Individual unless Covered Entity has received a valid authorization from the Covered Individual that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Covered Individual. This Paragraph III.B.7 shall apply to exchanges of Protected Health Information occurring on or after the compliance date applicable under the final regulations issued under HITECH that address this restriction.
8. Except as otherwise allowed by the Privacy Rule, Business Associate may not use or disclose Protected Health Information regarding a Covered Individual with respect to a communication about a product or service that encourages recipients of the communication to purchase or use the product or service unless Covered Entity receives no direct or indirect payment in exchange for making such communication and the communication is made to the Covered Individual: (i) to describe a health-related product or service (or payment for such product or service) that is provided by, or included in, the Plan, including communications about the entities participating in a health care provider network or health plan network, replacement of, or enhancements to, the Plan, and health-related products or services available only to Covered Individuals that add value to, but are not part of, the Plan; (ii) for treatment of the Covered Individual; or (iii) for case management or care coordination for the Covered Individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the Covered Individual. Notwithstanding the foregoing, Business Associate may use or disclose Protected Health Information regarding a Covered Individual with respect to a communication about a product or service that encourages recipients of the communication to purchase or use the product or service if the communication relates to a prescription drug that is currently being prescribed for a Covered Individual and any financial remuneration received by Covered Entity in exchange for making the communication is reasonably related to Covered Entity's cost of making the communication. This Paragraph III.B.8 shall apply to disclosures of Protected Health Information occurring on or after the compliance date applicable under the final regulations issued under HITECH that address this restriction.

- C. **Limitations on Business Associate's Uses and Disclosures.** With respect to Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity, Business Associate will not use or further disclose the Protected Health Information other than as permitted or required by this Agreement (including, but not limited to, any restrictions described in Section III.E.4) or as Required by Law.

- D. **Additional Obligations of Business Associate.** Except as otherwise specified in this agreement, the provisions of this Paragraph III.E.4.. apply only to Protected Health Information that Business Associate creates or receives, maintains, or transmits on behalf of Covered Entity.
1. **Safeguards.** Business Associate will use appropriate safeguards to prevent the improper use of, disclosure of, and tampering with Protected Health Information and to reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information.
 2. **Reporting and Mitigation.** Business Associate will report to Covered Entity any acquisition, access, use, or disclosure of Protected Health Information of which Business Associate becomes aware, or that is reported to Business Associate by an agent or Subcontractor, that is in violation of this Agreement. Such report shall be made within ten (10) business days of its discovery (as that term is defined in 45 C.F.R. Section 164.410(a)(2)) by Business Associate. Business Associate agrees to promptly mitigate, to the extent practicable, any harmful effect that is known to Business Associate of an acquisition, access, use, or disclosure in violation of this Agreement. This obligation includes, but is not limited to, any acquisition, access, use, or disclosure of Unsecured Protected Health Information that may constitute a Breach. The determination of whether a Breach has occurred, and of the resultant action, shall be the responsibility of Covered Entity.
 3. **Agents and Subcontractors.** Business Associate will enter into a written contract with any agent or Subcontractor who creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate that requires such agent or Subcontractor to comply with the same restrictions and conditions that apply by and through this Agreement to Business Associate with respect to such information.
 4. **Access to Protected Health Information.** Within fifteen (15) days of a request by Covered Entity for access to Protected Health Information about a Covered Individual, Business Associate shall make available to Covered Entity or, as directed by Covered Entity, a Covered Individual such Protected Health Information contained in a Designated Record Set. Effective September 23, 2013, if the Protected Health Information requested by Covered Entity is maintained in a Designated Record Set electronically, Business Associate shall make available, within the time period specified above, a copy of such information in the electronic form and format specified by Covered Entity, provided such information is readily producible in such form and format. If the information is not readily producible in such form and format, Business Associate shall make the information available in a readable electronic form and format as agreed to by the parties. In the event any Covered Individual requests access to Protected Health Information directly from Business Associate, Business Associate shall within five (5) days forward such request to Covered Entity. Notwithstanding anything herein to the contrary, Covered Entity shall be ultimately responsible for providing access to the requested Protected Health Information or making the determination to deny access to requested Protected Health Information.
 5. **Amendment of Protected Health Information.** Within fifteen (15) days of receipt of a request from Covered Entity or a Covered Individual for the

amendment of Protected Health Information or a record regarding a Covered Individual contained in a Designated Record Set, Business Associate shall (i) provide such information to Covered Entity for amendment, and (ii) incorporate any such amendments in the Protected Health Information as required by 45 C.F.R. Section 164.526. It shall be Covered Entity's responsibility to promptly notify Business Associate of the request for an amendment. Notwithstanding anything herein to the contrary, Covered Entity shall be ultimately responsible for determining whether the requested amendment shall be made and, if the request is denied, in whole or in part, complying with 45 C.F.R. Section 164.526.

6. **Disclosure Accounting.** Business Associate agrees to track such disclosures of Protected Health Information and information related to such disclosures as is necessary to enable Covered Entity to respond to a request by a Covered Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. Section 164.528. Within fifteen (15) days of receipt of notice from Covered Entity that it has received a request for an accounting of disclosures of Protected Health Information regarding a Covered Individual, Business Associate shall make available to Covered Entity such information as is in Business Associate's possession and is required for Covered Entity to make the accounting required by 45 C.F.R. Section 164.528. At a minimum, Business Associate shall provide Covered Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and, (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. Business Associate hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this section and applicable law. It shall be Covered Entity's responsibility to promptly notify Business Associate of the request for an accounting, and to prepare and deliver any such accounting requested. In addition to the forgoing, Business Associate shall track other disclosures and/or make available to Covered Entity such information as is necessary for Covered Entity to comply with any additional accounting requirements effective as of the compliance date applicable under final regulations implementing such requirements. Notwithstanding anything herein to the contrary, Covered Entity shall be ultimately responsible for providing the disclosure accounting to the Covered Individual.
7. **Access to Business Associate's Internal Records.** Business Associate shall make its internal practices, books, and records 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 Covered Entity or the Secretary, for the purposes of the Secretary's determining compliance with HIPAA for Covered Entity and/or Business Associate.
8. **Electronic Transactions.** In the event the Business Associate transmits or receives any Covered Electronic Transaction on behalf of Covered Entity, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent Required by Law, and shall ensure that any agents and Subcontractors that assist Business Associate in conducting Covered Electronic Transactions on behalf of Covered Entity agree in writing to comply with the Standards for Electronic Transactions Rule to the extent Required by Law.

E. **Obligations and Rights of Covered Entity.**

1. **Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. Section 164.520, as well as any changes to such notice.
2. **Requests by Covered Entity.** Covered Entity shall not request or direct 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. This includes, but is not limited to, requests or directions for disclosure of Protected Health Information to the Plan sponsor in a capacity other than acting on behalf of the Plan as Covered Entity. To the extent a dispute or difference of opinion exists between the Business Associate and Covered Entity regarding whether a use or disclosure is permissible, Business Associate may disclose the Protected Health Information under objection pursuant to the specific, written direction of Covered Entity. Any disclosures made pursuant to such specific, written direction shall be subject to the indemnification provisions of the Agreement.
3. **Changes in Permission.** 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 or disclosure of Protected Health Information.
4. **Restrictions.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information to which Covered Entity has agreed in accordance with 45 C.F.R. Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information. Such restrictions include, but are not limited to, a Covered Individual's request not to disclose Protected Health Information for purposes of payment or health care operations where the Protected Health Information relates solely to a health item or service for which the health care provider has been paid in full out-of-pocket by, or on behalf of, the Covered Individual.
5. **Agreement Breaches by Business Associate.** If Covered Entity obtains knowledge of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under this Agreement, Covered Entity will take reasonable steps to cure such breach or end such violation. If Covered Entity cannot successfully cure the breach or end the violation, Covered Entity shall terminate the Agreement in accordance with Section VI.B or, if feasible.

IV. **Electronic Security Provisions**

- A. **Introduction.** This section applies where Business Associate, on behalf of Covered Entity, performs or assists in the performance of functions and activities that may involve the creation, maintenance, receipt, or transmission of Electronic Protected Health Information. This Article IV along with the other sections of the Business Associate Agreement are (1) intended to meet the requirements of the "business associate" provisions of Security Rule, and (2) govern the terms and conditions under which the Business Associate may create, maintain, receive, and transmit Electronic Protected Health Information on behalf of Covered Entity. In general, Business Associate agrees and intends to act such that (1) Covered Entity can fulfill its responsibilities under HIPAA;

(2) Business Associate can fulfill its responsibilities under HIPAA; and (3) Business Associate can fulfill its contractual obligations under this Agreement.

B. Obligations of Business Associate. In accordance with the Security Rule, Business Associate agrees to:

1. Conduct a security risk assessment (in accordance with 45 C.F.R. Section 164.308(a)(1)(ii)(A)) and adopt and implement policies and procedures designed to ensure compliance with the Security Rule and this Agreement including, but not limited to, identifying a security officer and training personnel. This Paragraph IV.B.1 shall be effective as of the compliance date applicable under the final regulations issued under HITECH that address this requirement.
2. Implement administrative, physical and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that Business Associate creates, maintains, receives, or transmits on behalf of Covered Entity;
3. Report to Covered Entity any Security Incident of which Business Associate becomes aware within ten (10) business days of its discovery by the Business Associate;
4. Promptly mitigate, to the extent practicable, any harmful effect of a Security Incident that is known to Business Associate; and
5. Enter into a written contract with any agent or Subcontractor to whom Business Associate provides Electronic Protected Health Information that requires such agent or Subcontractor to comply with the same restrictions and conditions that apply under this Article IV to Business Associate, including, but not limited to, implementing reasonable and appropriate safeguards to protect such information.

C. Obligations of Covered Entity. Covered Entity shall not request or direct Business Associate to create, maintain, receive, or transmit Electronic Protected Health Information in any manner that would not be permissible under the Security Rule.

V. Breach Notification Requirements

If Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses Unsecured Protected Health Information, Business Associate shall notify Covered Entity of a Breach of such Unsecured Protected Health Information without unreasonable delay, but no later than sixty (60) days following discovery of the Breach. Such notice shall include an identification of each Covered Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach and any other available information needed by Covered Entity to enable it to comply with its notification obligations under the Privacy Rule and Security Rule. For purposes of this Article V, a Breach is deemed to have been discovered by Business Associate upon the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to Business Associate (including any person, other than the individual committing the Breach, that is an employee, officer or agent of Business Associate (determined in accordance with the Federal common law of agency)).

VI. Term and Termination

- A. **Term.** The Term of this Agreement will begin and become effective on the effective date of the Administration Agreement or, if later, the compliance date applicable to Covered Entity under the Privacy Rule, and shall terminate when all of the PHI created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Article VI.
- B. **Termination.** In the event that a party (the “non-breaching party”) discovers and determines that the other party (the “breaching party”) materially breached or violated any of its obligations under this Agreement, the non-breaching party will notify the breaching party of such breach in writing and may immediately terminate the Agreement upon notice to the breaching party or may provide the breaching party with an opportunity to take reasonable steps to cure the breach or end the violation, as applicable, within a mutually agreed upon period of time. If the breaching party's attempts to cure the breach or end the violation are unsuccessful within that period, without limiting the rights of the parties under the Agreement, the non-breaching party may immediately terminate the Agreement upon notice to the breaching party.
- C. **Effect of Relationship Termination.**
1. Except as provided in paragraphs (2) and/or (3) of this sub-section, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information created or received by it on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of Business Associate and/or its subcontractors or agents. Business Associate will not retain any copies of Protected Health Information.
 2. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate will notify Covered Entity of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible, Business Associate will 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..
 3. Should the Covered Entity notify Business Associate that the information necessary to comply with the recordkeeping requirements under other applicable law including, but not limited to, the Employee Retirement Income Security Act of 1974 (“ERISA”), includes the Protected Health Information., Business Associate shall return or provide to Covered Entity such information, including Protected Health Information

VII. General Provisions

- A. **Regulatory References.** A 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, and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

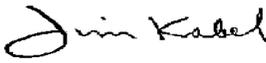
- C. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Business Associate and Covered Entity to comply with the Privacy Rule and the Security Rule.
- D. **Survival.** The respective rights and obligations of Business Associate and the Covered Entity shall survive the termination of this Agreement and any related services agreement.
- E. **Indemnity.** Business Associate will indemnify and hold harmless Covered Entity and Covered Entity's affiliates, officers, directors, employees or agents from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted or violating use or disclosure of Protected Health Information. or other breach of this Agreement by such party or any subcontractor, agent, person or entity under such party's control.
- F. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto, any rights obligations, or liabilities whatsoever.
- G. **Conformance with Law.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the parties to comply with the requirements of HIPAA as they apply to each party..
- H. **Action.** For purposes of this Agreement, whenever action is required by a party to this Agreement, such action must be taken by a person or persons with authority to act on behalf of such party to this Agreement.
- I. **Governing Law.** This Agreement shall be governed by the law of Minnesota, except to the extent preempted by federal law.
- J. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- K. **Notices.** All notices and communications required by this Agreement shall be in writing. Such notices and communications shall be given in one of the following forms: (i) by delivery in person, (ii) by a nationally-recognized, next-day courier service, (iii) by first-class, registered or certified mail, postage prepaid; or (iv) by electronic mail to the address that each party specifies in writing.
- L. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral, with regard to this same subject matter. Notwithstanding the foregoing, this Agreement is intended to supplement (rather than supersede) the agreement between Business Associate and the sponsor of the Plan related to the services that Business Associate provides with respect to administration of the Plan.
- M. **Counterparts.** This Agreement may be executed in counterparts, each of which so executed shall be construed to be an original, but all of which together shall constitute

one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart. This Agreement and any amendment or modification may not be denied legal effect or enforceability solely because it is in electronic form, or because an electronic signature or electronic record was used in its formation

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below.

Business Associate: Kabel Business Services

This 7th day of December 2015

By: 

on behalf of the Business Associate.

Print Name: Jim Kabel

Title: President

Covered Entity: City of Norwalk

This ____ day of _____, 201__

By: _____

on behalf of the Covered Entity.

Print Name: _____

Title: _____