



TOTAL ACCESS FSA CLIENT ENGAGEMENT KIT

What's inside:

- Total Access FSA Application
- Administration Agreement

What to do:

To initiate the Total Access FSA engagement between your organization, your broker and Benergy Outsourcing Strategies (OS), please do the following:

- [] Review the **Total Access FSA Proposal** (provided separately). This details the services you can expect and the fees.
- [] Complete and sign the one-page **Total Access FSA application**.
- [] Review the **Administration Agreement**, which serves as a contract between your organization and Benergy OS. Sign and date the three distinct parts of the contract: The Master Agreement Exhibit C (pertaining to FSA services) Exhibit D (the Business Associate Agreement regarding the HIPAA Privacy Rule)
- [] Make a **check** out to Benergy OS for the amount of the initial set-up, or if renewing, the annual fee as detailed in Exhibit C.
- [] Send all signed documents and the check to:

Benergy OS
Attn: FSA
353 South Potomac Street
Waynesboro, PA 17268

**BENERGY OS OUTSOURCING STRATEGIES, INC.
AGREEMENT FOR ADMINISTRATIVE SERVICES**

This Agreement for Administrative Services (the "Agreement") is made as of January 1, 2007, by and between City of Jonesboro (the "Employer"), a Arkansas corporation located at PO Box 1845, Jonesboro, AR 72403 and Benergy Outsourcing Strategies, Inc. ("BENERGY OS"), a Delaware corporation located at 353 South Potomac Street, Waynesboro, PA 17268.

Witnesseth:

WHEREAS, the Employer has established the employee benefit plans listed on Schedule 1 hereto (collectively, the "Employer Plans" or singularly, the "Employer Plan") for its employees, former employees and covered retirees, if any ("Employees") and their eligible dependents and beneficiaries;

WHEREAS, the Employer desires to engage BENERGY OS to provide certain administrative and ministerial tasks and services as selected by the Employer and set forth in the Exhibits attached hereto in connection with the Employer Plans (the "Services"); and

WHEREAS, BENERGY OS is willing and able to perform such Services for the Employer.

NOW, THEREFORE, in consideration of the mutual undertakings and covenants hereinafter contained, the Employer and BENERGY OS agree as follows:

1. **The Services.** The Employer hereby engages and hires BENERGY OS to perform the Services, and BENERGY OS hereby agrees to perform the Services, in connection with the Employer Plans. The Services to be provided by BENERGY OS, and the Employer's obligations with respect to BENERGY OS's provision of such Services, are described in detail in the Exhibits attached hereto.

2. **Exhibits.** The parties hereto agree to be bound by the terms of the following agreements, attached as Exhibits hereto:

- | | | |
|-------------|------------------------------|-----------|
| <u>N.A.</u> | Outsourcing Agreement | Exhibit A |
| <u>N.A.</u> | COBRA Agreement | Exhibit B |
| <u>X</u> | FSA Agreement | Exhibit C |
| <u>X</u> | Business Associate Agreement | Exhibit D |

Note: (Exhibit D must be checked and incorporated if Employer Plan is a group health plan.) Such agreements are incorporated as an integral part of this Agreement.

3. **Fees.** The Employer shall pay to BENERGY OS fees (the "Fees") in connection with the Services in the amounts as set forth in the various Exhibits attached hereto.

a. **Invoices.** BENERGY OS will submit or make available to the Employer each month a billing invoice for Fees for Services provided for the month. Subsequent year annual Fees, if applicable, will be due thirty days (30) days before anniversary dates. All monthly and annual Fees, if applicable, will be paid via automated clearing house ("ACH") debit no less than two business days following the invoice date.

b. **Late Payments.** The Employer will pay interest charges to BENERGY OS at the rate of 12% per annum, compounded monthly, on all overdue amounts. Interest charges will be calculated from the 30th day following the date of the billing invoice to the date of receipt of payment by BENERGY OS. Further, if Employer so fails to pay any fees due within thirty (30) days from the date of invoice, it will be deemed a material breach of this Agreement, in which case BENERGY OS may suspend or terminate the Services until such time as monthly payments are no longer in arrears

c. **Change in Fees.** BENERGY OS has the right to change any applicable Fees as of the date of any change in any governmental program, statute or regulation that changes or alters BENERGY OS's administrative expenses upon 30 days prior written notice to the Employer. BENERGY OS also has the right to change any applicable fees as of the date of any change in the Employer's practices or business that alters BENERGY OS'S administrative expenses upon 30 days prior written notice to the Employer. In addition, BENERGY OS may give the Employer written notice not fewer than 30 days prior to the commencement of any Renewal Term (as defined in Section 4(b) below) of any change in Fees to be effective as of the commencement of such Renewal Term. The Employer shall be deemed to have accepted such change in Fees unless it objects in writing at least 15 days prior to commencement of such Renewal Term.

d. **Fees Upon Termination.** Upon the expiration or termination of this Agreement, all accrued Fees due to BENERGY OS will be payable immediately upon the request of BENERGY OS.

e. **Run-Out Services.** "Run-out" claims processing services performed after the expiration or termination of this Agreement are not part thereof. Additional fees will apply and will be determined at the time run-out claims processing services are requested.

f. **Grace Period Claims.** "Grace period" claims processing services performed after the expiration or termination of this Agreement are not part thereof. Additional fees will apply and are determined at the time grace period claims processing services are requested.

g. **Request for Run-Out Services and Grace Period Claims.** No less than 30 days before the expiration or termination of this Agreement, the Employer is required to request in writing that Benergy OS provide either or both these additional services after the termination of this Agreement. A separate Run-Out and/or Grace Period Agreement

(the “Post-Termination Agreement”) will be executed between Benergy OS and Employer. Fees for these services are based upon participants that have a balance to be reimbursed at the time these services are requested. All fees under the Post-Termination Agreement are payable in advance.

4. Term and Termination.

a. Term. The term of this Agreement and Exhibit D, if applicable, will continue so long as one or more Exhibits for specific Services are in effect.

b. Initial Term of Exhibits. The initial term of each Exhibit for specific Services will be twelve (12) months from the initial date the specific Services to be provided there under commence (the “Initial Term”), unless terminated following written notice by either party of its intent to terminate in accordance with the provisions of this Agreement.

c. Renewal Terms of Exhibits. Each Exhibit will automatically renew for one-year terms (each a “Renewal Term”; the Initial Term and the Renewal Terms, if any, collectively the “Term”) following the anniversary date of commencement of specific Services unless terminated with sixty (60) day written notice by either party of its intent to terminate on the next anniversary date, or in accordance with the provisions of this Agreement.

d. Termination for Cause. Except as otherwise provided for herein, either BENERGY OS or Employer may terminate this Agreement and one or more Exhibits upon the material breach of the other party, if such breach remains uncured for 60 days following written notice to the breaching party.

e. Obligations of the Parties Upon Termination.

(i) Upon termination or expiration of this Agreement and one or more Exhibits, BENERGY OS shall make available to the Employer copies of all records and files in its possession generated in connection with the Services provided hereunder. At the request and expense of the Employer, BENERGY OS will arrange for the delivery of such records and files to the Employer or its authorized agent. If the Employer does not arrange for the delivery of such materials within 90 days of termination or expiration of this Agreement and one or more Exhibits, the Employer shall be deemed to waive the right to delivery of such records and files and BENERGY OS will be permitted to dispose of all such records and files without delivering them to the Employer.

(ii) The Employer agrees to return all Materials (as defined in Section 7(d) below) to BENERGY OS following termination of this Agreement and one or more Exhibits immediately upon Benergy OS’s request.

(iii) The Employer is required to provide in writing the request to provide “run-out” services and the processing of “grace period” claims no less than 30 days prior to the termination of this agreement, and to pay the fees for such services upon signing the Post-Termination Agreement.

(iv) Benergy OS is not obligated to provide “run-out” services or the processing of “grace period” claims following termination of this Agreement

(v) Benergy OS is not required to provide continued web access to Employer or its employees following the termination of this Agreement.

5. Indemnification.

a. Indemnification by BENERGY OS. BENERGY OS will indemnify, defend and hold harmless the Employer, its affiliates, and their respective officers, managers, directors, employees, members, partners, stockholders, and representatives from and against all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney’s fees (the “Losses”) arising out of or in connection with any willful breach of any covenant or obligation of BENERGY OS contained in this Agreement, except to the extent arising from the Employer’s or its employees’, officers’, directors’, affiliates’ or agents’ willful misconduct.

b. Indemnification by Employer. The Employer will indemnify, defend and hold harmless BENERGY OS, its affiliates, and their respective officers, managers, directors, employees, members, partners, stockholders, and representatives from and against all Losses arising out of or in connection with any breach of any covenant or obligation of Employer contained in this Agreement or with respect to the provision by BENERGY OS or its affiliates or agents of any of the Services (including, without limitation, any fine, penalty, or excise tax imposed under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), the Internal Revenue Code of 1986, as amended (the “IRC”) or otherwise, in connection with the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”), except to the extent arising from BENERGY OS’S or its employees’, officers’, directors’, affiliates’ or agents’ negligence or willful misconduct.

c. Notice of Indemnification. If either party receives a notice, compliant, or other notification of a lawsuit, claim, action or administrative proceeding or other action (the “Notice”) requiring indemnification by the other party, the party receiving the Notice shall notify the other party in writing within 5 days of receipt of such Notice.

d. Exclusive Remedy. Indemnification under this Section 5 shall be the exclusive remedy for any and all claims arising from this Agreement.

6. Representations and Warranties.

a. Representations of BENERGY OS. BENERGY OS MAKES NO REPRESENTATIONS OR WARRANTIES EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. THE WARRANTIES AND INDEMNITIES CONTAINED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, GUARANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, AND ALL OBLIGATIONS OR LIABILITIES ON THE PART OF BENERGY OS FOR LOSSES

(INCLUDING, WITHOUT LIMITATION CONSEQUENTIAL DAMAGES) ARISING OUT OF OR IN CONNECTION WITH THE PROVISION OF THE SERVICES HEREUNDER. BENERGY OS WILL NOT, UNDER ANY CIRCUMSTANCE, BE LIABLE TO THE EMPLOYER OR ANY OTHER PERSON FOR (1) CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF BENERGY OS IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING OR (2) ANY DAMAGES IN EXCESS OF THE AGGREGATE FEES PAID BY EMPLOYER TO BENERGY OS DURING THE TERM.

b. Representations of Employer. The Employer represents that the Employer Plans will be maintained during the term of this Agreement in accordance with COBRA, ERISA, the IRC, as amended, and other applicable law. The Employer shall be responsible for compliance with all requirements imposed by federal or state authorities upon employers who have established health benefit plans.

7. General Provisions.

a. Status of BENERGY OS.

(i) The parties acknowledge that BENERGY OS, in performing its obligations under this Agreement, is acting as agent of the Employer and shall not be designated or deemed the plan administrator as defined under ERISA with respect to the Employer Plans or the appropriate named fiduciary for review of entitlement to COBRA continuation coverage under the Employer Plans, for purposes of COBRA, ERISA and any other federal or State law of similar nature.

(ii) BENERGY OS shall provide only administrative services to the Employer Plans under this Agreement and shall not exercise any discretionary authority or control with respect to the Employer Plans. Accordingly, BENERGY OS shall not be a fiduciary under ERISA with respect to the Employer Plans.

(iii) The Employer hereby acknowledges that BENERGY OS disclaims any intention or capacity to provide legal advice, legal opinions or other legal services pursuant to this Agreement. The Employer agrees that it will rely solely upon the advice of its own legal counsel for any legal advice regarding the Services provided under this Agreement.

b. Accuracy of Information. The Employer acknowledges that BENERGY OS shall rely upon the Employer as to the accuracy and completeness of all information provided to BENERGY OS in connection with this Agreement and BENERGY OS shall not be required to make any independent verification of any such information or to make any inquiry as to whether any other information is required.

c. Employer Information. During the Term, the Employer will furnish to BENERGY

OS such information and other assistance as BENERGY OS will reasonably require to enable BENERGY OS to perform the Services, and BENERGY OS will have the right to inspect, upon reasonable notice and during normal business hours, any records of the Employer or in the possession of the Employer that relate to the Services.

d. BENERGY OS Materials. The Employer acknowledges and agrees that all products, forms, procedures, pricing and other materials (the "Materials") utilized or made available by the Employer to BENERGY OS in connection with any services rendered hereunder are the sole property of BENERGY OS. The Employer shall have no title or other right to or interest in any of such Materials, nor shall it acquire any such right, title or interest by use thereof in accordance with this Agreement. The Employer shall not license, market, copy, modify, sell or transfer any of such Materials, in whole or in part. The Employer acknowledges and recognizes that any breach of this Section would result in irreparable harm to BENERGY OS and, accordingly, agrees that in addition to and not in lieu of all remedies available to BENERGY OS by reason of such breach (at law or equity), BENERGY OS shall be entitled to equitable relief (including, without limitation, specific performance and injunctive relief) to enjoin the occurrence and continuation of such breach.

8. Miscellaneous.

a. Agency. Neither party is, nor shall be deemed to be, an employee, co-venturer, partner or legal representative of the other party for any purpose. Neither party shall be entitled to enter into any contracts in the name of, or on behalf of the other party. No employee of BENERGY OS or of the Employer shall be deemed in any manner whatsoever to be an employee of the other, and as such shall not be entitled to and is not qualified under any employee benefit plans provided by the other for its employees.

b. 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 and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

c. Assignment. Neither this Agreement nor any interest hereunder shall be assignable by any party, whether voluntarily, involuntarily or by operation of law, without the prior written consent of the other.

d. Further Actions. Each party agrees to execute, acknowledge and deliver such further instruments, and to do all other acts as may be necessary and appropriate, in order to carry out the purposes and intent of this Agreement.

e. Notices. All notices under this Agreement shall be in writing and shall be deemed effective upon actual receipt given if delivered personally or by facsimile transmission, telexed, mailed by registered mail or certified mail (return receipt requested), postage prepaid, or sent by express courier service, to the parties at the following addresses, or such other address as a party may specify by like notice:

If to BENERGY OS: Benergy Outsourcing Strategies, Inc.

Attn: FSA

353 South Potomac Street Waynesboro, PA 17268

Fax: 717-762-2449

If to Employer:

City of Jonesboro

PO Box 1845

Jonesboro, AR 72403

Attn: **Suzanne Hackney**

Fax: **870-933-4652**

f. Confidentiality and Nondisclosure. BENERGY OS will treat names, addresses, telephone numbers, social security numbers, birth dates, medical records, benefit information and all other personal information (“Confidential Information”) of and pertaining to persons covered under the Employer Plans as confidential. However, BENERGY OS may release Confidential Information to the Employer, insurer or any other third party to the extent reasonably required to perform its services under this Agreement or required by law or regulation and in accordance with Exhibit D, if applicable.

g. Books and Records. BENERGY OS shall maintain at its principal office, books and records of all transactions between it and the Employer for the duration of this Agreement and for 6 years thereafter; provided that such books and records shall be retained for any longer period that may be required by applicable law. The books and records shall be maintained in accordance with BENERGY OS’s generally accepted standards of bookkeeping and shall be available upon reasonable notice and during customary business hours to the Employer for examination, audit and inspection. Inspection shall be performed at Benergy OS’s office. If any examination, audit, or inspection is conducted by anyone other than the Employer’s reinsurers, the Employer, or the certified public accountant retained to perform an audit required by ERISA, BENERGY OS shall be compensated for its time spent and expenses incurred in connection with that examination, audit, or inspection at Benergy OS’s then current rates. BENERGY OS shall maintain at its principal office, books and records of the transactions, if any, between it, the Employer, reinsurers, the Employees of the Employer and their dependents. The Employer and BENERGY OS shall each retain a copy of this Agreement as a part of their official records throughout its term and for at least 6 years thereafter.

h. Governing Law. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania (except to the extent that those laws are preempted by ERISA or other applicable federal law) without regard to principles of conflicts of laws.

i. Entire Agreement. This is the entire Agreement between the parties with respect to its subject matter. It supersedes all prior agreements and understandings between the parties. This Agreement may not be modified except in writing signed by authorized officers of the parties.

j. Waiver of Breach. The failure of either party to require strict adherence of the other to the requirements of this Agreement shall in no way affect the respective rights of either party to enforce same nor shall any waiver of any breach of this contract be construed as a waiver of any subsequent breach or a waiver or modification of the provisions of this Agreement.

k. Captions and Headings. The captions and headings set forth in this Agreement are for convenience of reference only and do not define or limit any of the terms or provisions thereof.

l. Severability. The invalidity or unenforceability of any term or provision hereof shall in no way affect the validity or enforceability of any other term or provision.

m. Force Majeure. Neither party shall be liable for failure or delay of performance hereunder arising from Acts of God or other acts or occurrences beyond control of the parties, including but not limited to acts of courts and regulatory bodies, fires, explosions, weather-related obstacles to performance, labor stoppages, war or rebellion.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have signed this Agreement

**BENERGY OUT SOURCING
STRATEGIES, INC.**

By: _____

Name: _____

Title: _____

Date: _____