

## REIMBURSEMENT SERVICES AGREEMENT

Employer: Nueces County

Federal ID: ██████████ AFLAC Client ID:

Employer selects the following flex benefits checked below:

- Medical Care Expense Reimbursement (URM)                       Commuter Parking & Transit (CSA)  
 Dependent Day Care (DDC)

Employer elects FREE Flex Debit Card Services and agrees to the terms in Appendix E:     Yes    No

Employer elects URM Grace Period services and agrees to the terms in Appendix F:         Yes    No

Employer elects DDC Grace Period services and agrees to the terms in Appendix F:         Yes    No

Employer elects one Benefit Funding Method checked below and agrees to the respective terms in Appendix D:

- 1-Daily ACH Debit \*                       2-Daily Client Bank Settlement                       3-Daily ACH Credit  
 4-Fast Forward                               5-Self Pay

\*Daily ACH Debit funding is easiest to use for most employers

| Employer Bank Account Information   |  |   |
|---|--|---|
| Payments for FEES and BENEFIT FUNDS are pulled via WageWorks' initiated ACH debit, except for many Public Sector employers (some schools and governmental entities) where electronic access to an employer's bank account by an unrelated third party service provider for the collection of FEES and/or BENEFIT FUNDS is not permitted by law. |  |   |
|   | Fee Payments<br><small>Applies to processing service fees</small>  | Benefit Funding Payments<br><small>Do not complete for Funding Method 3 or 5</small>                                  |
| Name of Bank  |  | FROST NATIONAL BANK, PO BOX 749, Corpus Christi, Tx. 78403{   |
| Routing Number (9 digits)   |  | ██████████  |
| Bank Account Number:  |  | ██████████  |
| Name of Employer's Bookkeeping/Finance contact  |  | Albert Silguero, Treasury Account   |
| Email: Bookkeeping/Finance contact  |  | ██  |
| Phone: Bookkeeping/Finance contact  |  | ██████████  |
| Employer is a Public Sector entity  | <input type="checkbox"/> Check if ACH debit to pull fees is not permitted by law (and do not complete above) | <input type="checkbox"/> Check if ACH debit to pull benefit funds is not permitted by law (and do not complete above) |

### ACKNOWLEDGEMENT, EXECUTION AND AGREEMENT

By signing below, you acknowledge (i) that you have the authority to bind the Employer named above to all terms, conditions and obligations identified or set forth on the following pages in this Reimbursement Services Agreement and in Exhibit A (the "Agreement") and includes Cafeteria Agreement as of October 1, 2012 for the Plan Year beginning October 1, 2012 ("Initial Plan Year"); and (ii) that you have read and understand the Agreement. Signing binds the Employer and Wageworks, Inc. named above to all provisions of the Agreement.

Employer

Signature of Employer's Authorized Signatory:

By

Print Signatory's Name: {{Samuel L. Neal}}

Print Title of Signatory: Nueces County Judge }

WageWorks, Inc.

By

Miles S. Ross

Senior Vice President

**THIS REIMBURSEMENT SERVICES AGREEMENT**, effective upon execution for the Plan Year as set forth herein, by and between Nueces County (the "Employer") and WageWorks, Inc. ("WageWorks"). WageWorks agrees to provide all services described herein upon acknowledgement and agreement by Employer on October 1, 2012.

**WITNESSETH:**

**WHEREAS, Employer, Aflac, Inc. and Wageworks, Inc. have entered into an agreement entitled "Cafeteria Plan, including Premiums Only Plan, Enrollment, and Billings Services" (hereinafter referred to as "Cafeteria Agreement") and such Cafeteria Agreement is incorporated into and part of this Reimbursement Services Agreement; and**

**WHEREAS, Employer and Wageworks desire to enter into this Reimbursement Agreement in order to implement the services to be provided by Wageworks, Inc; in the Cafeteria Agreement and**

**WHEREAS, the Employer has adopted a Medical Care Expense Reimbursement ("URM") Plan and/or a Dependent Care Expense Reimbursement ("DDC") Plan for its Employees in conjunction with its Flexible Benefits Plan (collectively referred to, as the "Plan" and attached hereto) to be adopted and administered in accordance with Sections 125 and 129 of the Internal Revenue Code of 1986, as amended (the "Code"); and**

**WHEREAS, the Employer will serve as the Plan Sponsor and Wageworks as the Plan Administrator; and**

**WHEREAS, the Employer desires that WageWorks, as its Plan Administrator, furnish reimbursement services within a framework of policies, interpretations, rules, practices and procedures (the "reimbursement practices and procedures") and the Cafeteria Agreement made and established by the Employer in: (i) receiving and processing requests for benefits under the Plan ("Requests") and (ii) disbursing benefit payments from Employer funds (as provided for in Section II.A.) for eligible expenses under the flexible spending account provisions of the Plan; and**

**WHEREAS, the Employer is to pay all plan benefits owed or established under the Plan to its Participants, and WageWorks is to provide the agreed upon services to the Plan;**

**NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed as follows:**

Purpose: The purpose of this Reimbursement Agreement is to implement the services agreed to in the Cafeteria Agreement. Therefore all the terms and conditions in the Cafeteria Agreement are incorporated into this Agreement.

**Section I. Enrollment and Determination of Eligibility**

A. The Employer shall:

be responsible for interpreting the Plan and its provisions, its terms, conditions and operation; and

notify Plan Participants of their ability to apply for reimbursement benefits and supply them with Request forms (to be provided by WageWorks) and Request filing instructions; and

no later than thirty (30) days prior to the annual renewal date of Plan participation provide WageWorks with the names, addresses, Social Security Numbers or distinct participant ID numbers, and elected amounts of all Participants (and spouse or dependents if applicable) in the Plan; and

notify WageWorks at least five (5) business days (via means of written communication acceptable to WageWorks) prior to the first payroll date affected as to any new Participants (with elections made after annual enrollment) in any of the reimbursement Plans; and

notify WageWorks at least five (5) business days (via means of written communication acceptable to WageWorks) prior to the first payroll date affected as to any Change in Status affecting a Participant's election, or any Qualified Beneficiary electing coverage under COBRA and the amount of such election (if COBRA applies to the Employer), or of any other change which will affect WageWorks' responsibilities hereunder.

B. In determining any person's right to benefits under the Plan, WageWorks shall rely on the eligibility information furnished by the Employer, and any signed statements by Participants regarding the eligibility of their Requests under the respective Plan. It is mutually understood that the effective performance of this Agreement by WageWorks will require that it be advised on a timely basis by the Employer during the continuance of this Agreement of the identity of individuals eligible for benefits under each of the respective reimbursement Plans. Information regarding a Participant's enrollment under either reimbursement Plan shall identify the effective date of enrollment and shall be provided to WageWorks (via means of written communication acceptable to WageWorks) in accordance with the applicable timeframes set forth in Sections I.A.(3) through I.A.(5) above. Any delay shall result in a corresponding delay in WageWorks' ability to make benefit determinations. WageWorks shall not be responsible for delays in paying Requests where the Employer has failed to inform WageWorks of a Participant's enrollment information in a timely manner. Similarly, information modifying a

Participant's eligibility or status/election under reimbursement Plan shall identify the effective date of eligibility and the termination date of eligibility and shall be provided to WageWorks at least five (5) business days prior to the effective date of such modification in order to be considered by WageWorks in making benefit determinations hereunder.

## **Section II. Funding and Payment of Requests for the Plan Benefits**

- A. Funding of Requests. Employer must choose and agree to one of the five funding methods described in the Funding Options Schedule (attached hereto as Appendix D), which shall be part of and incorporated into this Agreement.
- B. WageWorks, as the Plan Administrator for the Employer, shall provide those services described in Appendix B, D method 1, in the Payment Card Services Appendix E and F (attached hereto) and the Cafeteria Agreement. WageWorks will provide the nondiscrimination tests. The terms and conditions (including applicable fees outlined in the Cafeteria Agreement) under which such services are provided are set forth in Appendix B "Nondiscrimination Testing Services". In providing services, WageWorks shall not assume that ERISA and COBRA apply to the Employer's Plan and shall discuss with the Employer on written direction.
- C. WageWorks shall not be obligated or responsible for any duty with regard to the administration of the Plan except as specifically provided above or in the attached appendices or in the Cafeteria Agreement. It shall be WageWorks responsibility (as Plan Administrator) to: monitor compliance with COBRA; perform required nondiscrimination testing; recommend amendments to the Plan as necessary to ensure ongoing compliance with applicable law; to prepare any required tax or governmental returns (including Form 5500 returns to meet ERISA requirements) relating to the Plan for Employer filing; determine and inform Employer if and when a valid election change has occurred; handle Participant claim appeals; allow WageWorks, by and through independent associates, a reasonable opportunity to discuss with Employer, the DDC and URM benefits; execute and retain required Plan and claims documentation; and take all other steps necessary to maintain and operate the Plan in compliance with applicable provisions of the Plan, ERISA, the Code and other applicable federal and state laws.
- D. In the event that WageWorks overpays any person entitled to benefits under the Plan or pays benefits to any person who is not entitled to them, WageWorks shall take all reasonable steps to recover the overpayment, except that WageWorks shall not be required to initiate court proceedings to recover an overpayment. WageWorks shall promptly notify the Employer if it is unsuccessful in recovering any overpayment. Additionally, any overpayment occurring as a result of an ineligible Card Transaction will be handled in accordance with the provisions set forth in the Card Services Appendix (attached hereto).
- E. WageWorks will optically scan and maintain electronic copies of all Plan reimbursement Requests and supporting documentation for a period of seven (7) years after the claim is processed. Copies of claim documents can be reproduced upon written request to WageWorks' and costs in accordance to the terms and conditions in the Cafeteria Agreement. Any record attributable to Card Transactions will be made available by WageWorks only to the extent made available to WageWorks by any Card Processor or other Card service provider.

## **Section III. Liability and Indemnity**

- A. In performing its obligations under this Agreement, WageWorks neither assumes nor underwrites any liability of the Employer under the Plan, but with respect to the Employer, acts only as provider of those services specifically described in Section II.B. of this Agreement and with respect to Plan Participants, acts only as the Plan Administrator for the Employer. The services to be performed by WageWorks shall be ministerial in nature and shall be performed within the framework of policies, interpretations, rules, practices, procedures made or established by Employer, and the terms and conditions in the Cafeteria Agreement. WageWorks shall have no discretionary authority or discretionary control over any assets of the Employer, the Plan, or Plan Participants.
- B. WageWorks shall have no duty or obligation to defend any legal action or proceeding brought to recover a Request for Plan benefits. WageWorks shall, however, make available to the Employer and its counsel, such evidence relevant to such action or proceeding as WageWorks may have as a result of its processing of the contested benefit determination.
- C. Except as otherwise provided in this Agreement or in the Cafeteria Agreement, the Employer shall retain the liability for all Plan benefit Requests and all expenses incident to the Plan and for any and all violations of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), if applicable, and agrees to indemnify WageWorks in accordance to the terms and conditions in the Cafeteria Agreement. The indemnity provision in the Cafeteria Agreement shall survive the termination of this Agreement.

- D. WageWorks shall use ordinary and reasonable care in the performance of its duties, and liability and indemnification is in accordance to the terms and conditions in the Cafeteria Agreement.
- E. Except as otherwise provided in the HIPAA Business Associate Agreement (Exhibit A), the Employer agrees that WageWorks may communicate confidential, protected, privileged or otherwise sensitive information to Employer through the Named Contact (as designated on the applicable plan document request form or as subsequently updated by the Employer and maintained on file by WageWorks) and agrees to indemnify WageWorks and hold it harmless in accordance to the terms and conditions in the Cafeteria Agreement.
- F. Each party shall indemnify, defend and hold harmless the other party in accordance to the terms and conditions in the Cafeteria Agreement.

#### **Section IV. Reimbursement Request Processing Service Fee**

- A. The Employer shall pay WageWorks a fee for services performed under this Agreement (the "Service Fee"). Service Fees are based on the terms and conditions in the Cafeteria Agreement.

#### **Section V. Term of Agreement**

The initial term of this Agreement shall commence in accordance to the terms and conditions in the Cafeteria Agreement.

#### **Section VI. Termination of Agreement**

- 1. This Agreement shall terminate in accordance to the terms and conditions in the Cafeteria Agreement.
- 2. Upon termination of this Agreement, WageWorks shall cease the processing of all Requests then in its possession, return any undistributed funds to the Employer, and make all records relating to Requests in process reasonably available to the Employer under the terms and conditions in the Cafeteria Agreement. .

#### **Section VII. Miscellaneous**

- (1) Notices. Any notice required to be given hereunder to WageWorks or Employer shall be in accordance to the Cafeteria Agreement.
- (2) Applicable Law. This Agreement shall be governed by, and shall be construed in accordance to the terms and conditions in the Cafeteria Agreement.
- (3) Legal and Tax Status. WageWorks shall have no power or authority to waive, alter, breach, or modify any terms or conditions of the Plan.
- (4) Assignment. This Agreement may be assigned by WageWorks to any other party in accordance to the terms and conditions in the Cafeteria Agreement.
- (5) Entire Contract. This Agreement constitutes the entire contract between the parties and no modification or amendment hereto shall be valid unless in accordance with the terms and conditions of the Cafeteria Agreement.
- (6) Tax Reporting and Withholdings. The Employer has ultimate control over the payment of Plan benefits and shall be the sole party responsible for income and employment tax reporting and withholding obligations imposed as a result of any such payments being included in the gross income of recipients. WageWorks is a mere Plan Administrator of the Employer for the processing of Benefit Requests.
- (7) Confidential Information. Confidentiality of information and ownership and use of data shall be in accordance to the terms and conditions in the Cafeteria Agreement. .
- (8) Massachusetts Data Security Regulations (201 CMR 17.00 et seq). WageWorks certifies that it has in place and shall maintain during the term of the Agreement, a written comprehensive security program that is in compliance with the provisions of 201 CMR 17.00 et seq. (the "Regulations").
- (9) Subcontractors. WageWorks utilizes subcontractors to perform certain services in connection with this Agreement. WageWorks shall be liable for the acts or omissions of its subcontractors.

**Appendix B**  
**Nondiscrimination Testing Services and Form 5500 Preparation Services**  
**[Provided Upon Annual Request]**

**Nondiscrimination Testing:**

The Employer, upon submission of an annual Non-discrimination Testing Questionnaire, authorizes WageWorks to compile nondiscrimination testing percentages based upon the employee census data provided. In addition, the Employer understands and agrees that:

- WageWorks as the plan Administrator, will monitor compliance and provide testing percentages to Employer for review and consultation with Employer's legal or tax consultant.
- The Employer bears a sole responsibility for nondiscrimination testing and the continued qualified status of its cafeteria plan under all applicable provisions of the Internal Revenue Code.
- The testing percentages provided by WageWorks are merely an indicator of compliance with three of the applicable nondiscrimination tests – the Cafeteria Plan 25% Key Employee Concentration Test, the Dependent Care 5% Shareholder Test, and the Dependent Care 55% Average Benefits Test. The Employer must also ensure compliance with the Eligibility Test and Contributions and Benefits Test applicable to the Cafeteria Plan, the URM, and the DDC Plan, as well as other tests that may apply to the benefits offered through the Cafeteria Plan. To ensure compliance with applicable provisions of the Internal Revenue Code, additional nondiscrimination testing and result verification must be undertaken by the Employer with the assistance of its tax or legal counsel.
- Discrimination testing should be conducted at least 180 days prior to the end of the Plan Year to which the data relates to ensure adequate time to make any required corrections.. WageWorks will assist with discrimination testing no less frequently than once per year and no more frequently than once every ninety (90) days.

**Form 5500 Preparation:**

Only employers with more than 100 participating employees at the beginning of the plan year are required to file Form 5500.

The employer, upon submission of an annual request for form 5500 Assistance Plan Sponsor and Cafeteria Plan Information Data Sheet, authorizes WageWorks to prepare a "signature-ready" Form 5500 and applicable schedules based upon the information provided regarding the Employer and its cafeteria plan. Liability and Indemnity Provisions in the Cafeteria Agreement are applicable.

- Providing WageWorks with the information needed to complete the Form 5500 does not constitute an actual filing with the Internal Revenue Service. The timely submission of the appropriate forms remains the responsibility of the Employer.

**Appendix D**  
**Funding Options Schedule**

**Method 1 – Daily ACH Debit**

In accordance with the attached Reimbursement Services Agreement, Employer has designated this funding option. To the extent this Appendix conflicts with the Agreement (with the exception of Section II.C. and Section III: Liability and Indemnity Section of the Agreement), this Appendix shall control. For purposes of the foregoing, an executed Funding Option Change Form shall be valid and in force only if agreed to by WageWorks.

**1. Settlement of Claims**

- a. Benefits under the Employer's Plan will be paid from a WageWorks owned account ("the Account") with funds provided from the general assets of the Employer. Benefits will be remitted from the Account without prior funds confirmation and without Employer preapproval of claims payments to be disbursed. On a daily basis, Employer will reimburse WageWorks for benefits paid on the previous day by allowing an ACH debit on Employer bank account. Employer's bank account may include a zero balance feature, although this is not required.
- b. WageWorks will notify the Employer by email with the amount of the daily reimbursement made by WageWorks through ACH Debit. Review of claims payments disbursed are available daily to the Employer on the WageWorks website. Any identified discrepancy with disbursed payments shall be discussed with Employer account rep. Agreed upon corrections to participant balances shall be adjusted within 2 business days and credited back to Employer account. Credits shall be applied to Employer account weekly and netted against funds requirements
- c. Payment features for participants: Flex debit card, check, direct deposit.
- d. All transactions (card, checks and direct deposit) will settle directly from the WageWorks owned account, which is secured by the Positive Pay Security Feature.

**2. Employer Obligations:**

The Employer shall:

- a. Make sufficient funds from its general assets available an Employer owned account for amounts allocable to eligible reimbursement benefits under its Plan [Note: the Account should not be opened in the Plan's or WageWorks' name]
- b. Grant WageWorks the authority to initiate ACH debits on the Employer owned account sufficient to replenish the Account daily for benefits paid from the Account.
- c. Provide WageWorks with the name, address and contact person at the Employer associated with the Account, and provide timely notice to WageWorks if such information changes
- d. Ensure that any filters, debit blocks, or similar financial restrictions on the Account are removed or modified in such a way as to ensure the successful drafts or electronic transfers for remittance of eligible reimbursement benefits under the Employer's plan
- e. Bear sole responsibility for any fees imposed with respect to Employer owned account
- f. If, at any time, the amount of reimbursement benefits payable under the applicable Plan provisions exceeds the amount deposited by the Employer in the Account, the Employer shall transfer an amount necessary to the Account to fulfill its reimbursement obligations under the applicable Plan before any further reimbursement benefit payment is made. WageWorks is under no obligation to advance funds on behalf of the Employer.
- g. WageWorks will not be responsible for paying claims to the extent sufficient funds are not provided to WageWorks within five (5) business days of the receipt of the request for such funds from WageWorks. Furthermore, WageWorks will immediately cease to provide the services outlined within this Agreement until such time as an amount equal to the aggregate of all Requests payable under the Employer's Plan are received by WageWorks from the Employer. The Employer agrees to indemnify WageWorks for all amounts and expenses resulting from the Employer's failure to provide sufficient funds and shall hold WageWorks, its officers and directors, harmless for any liability for which the Employer or the Plan may become liable.

**Appendix E**  
**FREE Flex Debit Payment Card Services**

The following additional provisions shall apply with respect to Flex Debit Card Payment Services for FSAs and Commuter benefits and the issuance of WageWorks debit cards to Participants. The term, "Card," shall mean a WageWorks' debit card issued to a Participant.

1. Unless otherwise directed by you in writing, each employee that enrolls in the Plan will receive a free flex debit card and be allowed to order additional free cards for their spouse and/or dependents. Cards will be accompanied by and subject to a cardholder agreement between our issuing bank and the cardholder. There is no charge (to you, your employees or their dependents) for the debit cards.
2. WageWorks shall be responsible to provide administrative services to Participants, including updating Participants' records, maintaining accurate account balances and deposit information, activating and deactivating Cards, responding to Participants' inquiries and providing appropriate notices of actions taken.
3. Payment of Card transactions shall be withdrawn against the applicable Participant's Account and shall be reimbursed by the Employer based on the benefit claims funding method chosen by the Employer.
4. WageWorks agrees to reasonably ensure compliance with proper use of the Card and take whatever action is necessary to investigate and resolve errors in Card transactions asserted by Participants.
5. WageWorks agrees to cancel, as soon as is administratively practicable, access to a Participant's Card when a Card is reported as being lost or stolen.
6. The debit card may only be used for the payment of qualified expenses and (as required by the IRS) all transactions are subject to review. Some transactions will be reviewed and adjudicated automatically. For example, (if we have your health plan co-pays in our system) transactions at a doctor's office that are equal to the employee's medical co-pay will be automatically adjudicated, and no further verification will be required. Also, at "certified" drugstores, grocers, and superstores, the debit card separates purchases into flex-eligible and ineligible items and only pays for qualified healthcare items. This eliminates the inconvenience of requesting receipts (for further verification) when employees use the card at 40,000 "certified retail" locations. The employee will be directed to supply receipts for all remaining transactions that were not adjudicated automatically. This requirement applies to payments from FSA and HRA accounts.
7. WageWorks agrees, upon notice from Employer of termination or ineligibility of a Participant to, as soon as is administratively practicable, to deactivate such Participant's Card. If Employer fails to provide this notice in a timely manner causing payment of ineligible expenses, Employer will be responsible for all costs incurred for subsequent Card transactions made by the terminated or ineligible Participant.
8. At the time of each employee's enrollment in the Plan and in the cardholder agreement, the employee agrees to reimburse you for the amount of any card transaction that was not for a qualified expense. For transactions determined to be for non-qualified expenses ("NQE"), the employee will automatically be notified of the amount due on the employee website. The amount due can be repaid at the employee web site. If the any portion of an amount due still remains outstanding, we will offset the amount due against future claim reimbursements under the Plan. If the employee does not repay any remaining amount due, you may, to the extent allowed by applicable law, withhold the amount at issue from the employee's pay or may bill the employee. However, you are responsible for determining whether applicable law will permit you to withhold such amounts and should consult legal counsel concerning such withholding. You must also take action to ensure that further violations do not occur, including denial of access to the card. In the event the amount cannot be collected from the employee, you should include the amount due as income on the employee's W-2 form for the year in which you have exhausted collection efforts and have determined the amount to be uncollectible. This requirement applies to payments from FSA and HRA accounts.
9. Employer acknowledges that any and all data or information necessary to provide a Card will reside on servers owned by or operated on behalf of WageWorks' service providers. Employer hereby grants to WageWorks and its service providers the right to receive process and perform services with all information and data that is submitted to WageWorks in order for WageWorks to provide Cards. Employer further grants to WageWorks and its service providers the right to derive and use aggregate and statistical data from such information and data.
10. Employer hereby grants to WageWorks and its service providers a non-exclusive, non-transferable, royalty-free license to use Employer's trademarks in connection with the Card programs, in the forms and formats approved by Employer on (i) Cards; (ii) periodic statements; and (iii) other communications to Plan Participants with respect to the accounts. Employer agrees that the name of the financial institution which issues the Cards, a web site Uniform Resource Locator, and a customer service phone number will be printed on all Cards.
11. Employer agrees to notify WageWorks immediately upon suspicion or confirmation of inappropriate or fraudulent Card use.
12. As provided in this Appendix, Employer has authorized and instructed WageWorks to implement its standard administrative procedures to provide services in accordance with this Appendix and the Agreement. Such

standard administrative procedures may be different for one or more Card transactions or groups or categories of Card transactions, as determined solely by WageWorks.

**Appendix F**  
**Grace Period Services**

WageWorks will perform grace period administrative services in accordance with the following terms with regard to reimbursement requests received on or after the later of the effective date of the grace period as identified or the date this Agreement is received by WageWorks.

The grace period will begin on the first day of the Plan Year following the Plan Year to which it relates and will end two (2) months and fifteen (15) days later. For example, if the Plan Year ends December 31st, the grace period begins January 1st and ends March 15th.

Eligible Medical Expenses and/or Eligible Employment-Related Expenses incurred during the grace period (as noted above) and approved for reimbursement will be paid first from available amounts that were remaining at the end of the Plan Year to which the grace period relates and then from any amounts that are available to reimburse expenses incurred during the current Plan Year.

Expenses incurred during the grace period (as noted above) must be submitted before the end of the Run-off Period. This is the same Run-off Period for expenses incurred during the Plan Year to which the grace period relates.

The Employer will not amend/change their Run-off Period without first notifying WageWorks at least one (1) month prior to the existing Run-off Period. WageWorks will continue to assume that your current Run-off Period still applies unless notified otherwise prior to the end of the Run-off Period. If your current Run-off Period does not extend past the grace period, WageWorks will assume that there is no Run-off Period for grace period expenses. Failure to timely notify WageWorks of any changes in the Run-off Period may result in an increase in the service fees as set forth in Section IV of the RSA.

Any unused amounts that are not used to reimburse eligible expenses incurred either during the Plan Year to which the grace period (as noted above) relates or during the grace period will be forfeited to the employer if not submitted for reimbursement before the end of the Run-off Period.

## Exhibit A

### HIPAA BUSINESS ASSOCIATE AGREEMENT

**THIS APPENDIX**, effective upon the execution of the Reimbursement Services Agreement attached hereto, by and between WageWorks, Inc. (WageWorks) and the Nueces County MEDICAL CARE REIMBURSEMENT PLAN (the "URM Plan") is adopted by the Nueces County (the "Employer") on behalf of the URM Plan and is incorporated into and made part of the Reimbursement Services Agreement ("Agreement") between WageWorks and the Employer. This Exhibit A is intended to comply with the business associate agreement provisions set forth in 45 CFR §§ 164.314 and 164.504(e), and any other applicable provisions of 45 CFR parts 160 and 164, issued pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 as amended, including by the Health Information Technology for Economic & Clinical Health Act of the American Recovery and Reinvestment Act of 2009 ("ARRA"), (collectively "HIPAA").

WageWorks recognizes that in the performance of services for the URM Plan under the Agreement it will have access to, create, and/or receive from the URM Plan or on its behalf Protected Health Information ("PHI"). For purposes herein, PHI shall have the meaning given to such term in 45 CFR § 1640.103, limited to the information created or received from the URM Plan or on its behalf by WageWorks. Whenever used in this Exhibit A other capitalized terms shall have the respective meaning set forth below, unless a different meaning shall be clearly required by the context. In addition, other capitalized terms used in this Exhibit A but not defined herein, shall have the same meaning as those terms are defined under HIPAA.

#### SECTION 1. WAGeworks RESPONSIBILITIES

- 1.1 WageWorks may use or disclose PHI, provided that such use or disclosure of PHI would not violate HIPAA, as follows: (a) as permitted or required in this Exhibit A and in the Agreement; (b) as Required by law in accordance with 45 CFR § 164.512; (c) for the proper management and administration of WageWorks; (d) to fulfill any present or future legal responsibilities; (e) for Data Aggregation services to the URM Plan (as defined in 45 CFR § 164.501; or (f) any use and disclosure of PHI that has been de-identified within the meaning of 45 CFR § 164.514.
- 1.2 WageWorks agrees to implement commercially reasonable and appropriate safeguards to prevent the use and disclosure of PHI other than as provided for by this Exhibit A.
- 1.3 WageWorks agrees to implement commercially reasonable administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the URM Plan.
- 1.4 WageWorks agrees to report to the URM Plan any Security Incident that is material or any use or disclosure of PHI of which it becomes aware that is not provided for by this Exhibit A or in the Agreement.
- 1.5 WageWorks agrees to ensure that any agent, including a subcontractor, to whom it provides PHI agrees to the same restrictions and conditions that apply through this Exhibit A to WageWorks with respect to such information.
- 1.6 At the request of the URM Plan, and in a mutually agreeable time and manner, WageWorks agrees to provide access to PHI it holds in a Designated Record Set (as defined in 45 CFR § 164.501), to the URM Plan, or as directed by the URM Plan, to an Individual in order to meet the requirements under 45 CFR § 164.524. WageWorks shall have the right to charge the Individual a reasonable cost-based fee, as permitted by 45 CFR § 164.524. WageWorks assumes no obligation to coordinate the provision of PHI maintained by other business associates of the URM Plan.
- 1.7 At the request of the URM Plan, and in a mutually agreeable time and manner, WageWorks agrees to make any amendment(s) to PHI it holds in a Designated Record Set that the URM Plan directs or agrees to pursuant to 45 CFR § 164.526 at the request of the URM Plan or an Individual.
- 1.8 At the request of the URM Plan, and in a mutually agreeable time and manner, WageWorks agrees to make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by WageWorks on behalf of the URM Plan available to the Secretary (as defined in 45 CFR §

160.103), for purposes of the Secretary determining the URM Plan's compliance with the Privacy and Security Rules.

- 1.9 WageWorks agrees to document such disclosures of PHI and information related to such disclosures of PHI and information related to such disclosures as would be required for the URM Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- 1.10 WageWorks agrees to provide to URM Plan or an Individual, in the time and manner designated by URM Plan, information collected in accordance with 1.09 to permit the URM Plan to respond to an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- 1.11 Except as provided for herein, or as required by law, upon termination of the Agreement, WageWorks agrees to return to the URM Plan, Employer, or destroy PHI and retain no copies in any form IF ALLOWED BY HIPPA LAWS OR OTHER LAWS AND CREATE AND MAINTAIN DESTRUCTION DOCUMENTATION PURSUANT TO HIPPA LAWS OR OTHER LAWS. If PHI is destroyed pursuant to HIPPA laws or other laws then the destruction documentation shall be provided to URM Plan, Employer, WageWorks agrees to extend the protections, limitations and restrictions of this Exhibit A to such PHI and to limit any further uses and/or disclosures of such PHI retained to the purposes that make the return or destruction of the PHI, for as long as WageWorks maintains such PHI. Both parties agree that this Section 1.11 shall survive the expiration or termination of the Agreement and remain in full force and effect thereafter for so long as WageWorks or any of WageWorks' employees, subcontractors, or agents remain in possession of any PHI, and shall expire thereafter.

## **SECTION 2. PLAN AND EMPLOYER RESPONSIBILITIES**

- 2.1 Employer acting as the Plan Sponsor agrees to comply with the administrative requirements set forth in 45 CFR §§ 164.530 and 164.504(f), including but not limited to amending the URM Plan to restrict uses and disclosures of PHI.
- 2.2 The Employer acknowledges and agrees that WageWorks shall only disclose PHI in its possession to the Named Contact as designated (and through the modes specified) in Section III.F of the Agreement. The employees who are identified on the applicable plan document request form (and in the Plan documents) shall be the Designated Persons in accordance with 45 CFR § 164.504(f), and disclosures to such persons by WageWorks are solely for purposes of carrying out plan administration functions that the Employer performs for the URM Plan.
- 2.3 Employer shall timely notify WageWorks in writing of any changes to the names or positions of employees listed in subsection 2.2 as Designated Persons.
- 2.4 Employer acknowledges and agrees that under the HIPAA Privacy Rules Designated Persons may only request the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. WageWorks shall have no duty to ensure that the amount of PHI requested by the Designated Persons is the minimum amount necessary.
- 2.5 Employer shall indemnify and hold harmless WageWorks in accordance to the terms and conditions of the Cafeterua Agreement.
- 2.6 URM Plan shall not request WageWorks to use or disclose PHI in any manner that would not be permissible under the Privacy and Security Rules if done by the URM Plan, except that WageWorks may use or disclose PHI as provided in Section 1.1.
- 2.7 URM Plan shall provide URM Plan participants and beneficiaries with adequate notice of the uses and disclosures of PHI that may be made by the URM Plan, and of the individual's rights and the URM Plan's responsibilities with respect to PHI as required in 45 CFR § 164.520. The URM Plan further agrees to forward a copy of such notice to WageWorks, as well as any changes to such notices.
- 2.8 URM Plan shall provide WageWorks with any changes to, or revocation of, permission by a Participant or Beneficiary to use or disclose PHI, if such changes affect WageWorks' permitted or required uses or disclosures.
- 2.9 URM Plan shall not agree to any special privacy restrictions requested by an individual without WageWorks' written approval, including those provided for 45 CFR § 164.522.

- 2.10 Notwithstanding any other provision of this Agreement, WageWorks recognizes that the URM Plan may have other business associates and its sharing of PHI with such other business associates of the URM Plan will be reasonable and necessary to facilitate URM Plan administration. WageWorks agrees to disclose PHI in its possession to such other entities as directed by the URM Plan, provided that such other business associates agree to comply with the Privacy and Security Rules with respect to the use and disclosure of such PHI. The URM Plan shall be solely responsible for ensuring that it has entered into appropriate business associate agreements with its other business associates in accordance with 45 C.F.R. § 164.504(e).

### SECTION 3. MISCELLANEOUS

- 3.1 Both parties agree that nothing expressed or implied in this Exhibit A is intended to confer, nor shall anything herein confer, upon any person other than WageWorks, the URM Plan, the Employer, and their respective successors, or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 3.2 This Exhibit A shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy and Security Rules.
- 3.3 Both parties acknowledge that future changes to the requirements of HIPAA, the Privacy and Security Rules, and other applicable laws relating to the security and confidentiality of PHI may require amendment to this Exhibit A. Upon the written request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Exhibit A. If either party disagrees with any such amendment, it shall so notify the other party in writing within 30 days of notice. If the parties are unable to agree on an amendment within 30 days thereafter, then any of the parties may terminate the Agreement in accordance with the termination section of the Agreement.
- 3.4 Notwithstanding Section 3.3 above and without limiting the rights of the parties under the Agreement, upon written notice of the existence of an alleged material breach of the terms of this Exhibit A, the URM Plan shall afford WageWorks an opportunity to cure said breach upon mutually agreeable terms. Failure to cure within 30 days shall be immediate grounds for termination of the Agreement.
- 3.5 Section 1.11 shall survive the termination or expiration of the Agreement for the reasons stated therein. The other provisions of this Exhibit A shall survive the termination of the Agreement and remain in full force and effect thereafter for so long as WageWorks or any of its employees, agents or subcontractors remains in possession of PHI in accordance with Section 1.11 of this Exhibit A and shall expire thereafter.

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