

State of Texas § Know by all men these presents:

County of Nueces County §

NUECES COUNTY and HEALTHSMART BENEFIT SOLUTIONS, INC.
AGREEMENT FOR NETWORK SERVICES

This agreement is between Nueces County (hereinafter referred to "County"), whose place of business is located at 901 Leopard Street, Nueces County Courthouse, Corpus Christi, Texas 78401 and HealthSmart Benefit Solutions, Inc., (hereinafter referred to as "Network Provider"), whose principal place of business is located at 222 W. Las Colinas Blvd., Suite 600N, Irving, TX 75039.

WHEREAS, Nueces County currently makes available to its employees a self-funded plan of medical care benefits ("Medical Plan");

WHEREAS, Nueces County advertised a Request For Proposal (RFP No. 2933-13) for provision of certain services as related to this medical care plan;

WHEREAS, HealthSmart Benefit Solutions, Inc. along with others provided a response to RFP No. 2933-13;

WHEREAS, the Nueces County Commissioners awarded the contract for Network Services (In-Area), further defined herein, as detailed in RFP No. 2933-13 to HealthSmart Benefit Solutions, Inc.;

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

1.0 DURATION OF CONTRACT

1.1 The term of the agreement shall be for a period of twelve (12) months and shall begin on October 1, 2013 and shall end on September 30, 2014. This agreement may be renewed by mutual agreement by County and HealthSmart for three (3) successive additional twelve (12) month terms, respectively, upon sixty (60) days written notice to Network Provider prior to expiration of the then current term. County may terminate this Agreement at any time upon providing thirty (30) days written notice to Network Provider.

1.2 County and Network Provider are entering into an agreement for Network Services. "Network Services" consists of network services as set out in County RFP No. 2933-13, however limited to Network Provider's in-area providers, namely the Christus Spohn Network.

1.3 Network Provider may terminate Agreement for cause upon giving County notice and sixty (60) days to cure. This provision shall not apply for non-payment of disputed invoices.

2.0 SCOPE OF CONTRACT/ CONTRACT DOCUMENTS

2.1 County's RFP No. 2933-13 is herein attached as Exhibit "A" and is herein incorporated in its entirety.

- 2.2 Network Provider's Response to Proposal No. 2933-13 is herein incorporated by reference. Not herein attached, but specifically considered a term of this Agreement are Network Provider's "Discount Rates for Nueces County Health Benefit Plan" and "Annual Percentage Base Rate Increases" to discounted procedures which are identified as "proprietary and confidential" and will therefore be maintained under separate cover. Subsequent "Annual Percentage Base Rate Increases" and any changes to the "Discount Rates" will be provided to County prior to any renewal term but no later than March 15th.
- 2.3 Scope of Contract shall be consistent with Network Services requested under RFP No. 2933-13 and responded to in Network Provider's Response to RFP No. 2933-13.

THIS AGREEMENT, together with the other documents enumerated in Paragraph 2, which said other documents are fully a part of the Agreement as if hereto attached or herein repeated, forms the Agreement. In case of conflicts with any provision of any other component part, the provision of the component part first enumerated in this Paragraph 2 shall govern, except as otherwise specifically stated.

3.0 FUNDING

- 3.1 Funds for payment have been provided through Nueces County budget approved by the Nueces County Commissioners Court for the fiscal year only. State of Texas prohibits the obligation and expenditure of public funds beyond the fiscal year for which the budget has been approved. Therefore, obligations that may arise past the end of the current fiscal year shall be subject to budget approval. County represents to Network Provider that budget approval has been obtained for the first fiscal year of this Agreement.
- 3.2 Payment for the network services to be provided shall be made in accordance with fees and rates delineated in Network Provider's Response to RFP No. 2933-13 and further set out in Tab titled Network Proposal to Network Provider's response. Specifically, for access to the Christus Spohn Health Network, County shall pay Network Provider a fee of \$3.25 per employee per month. Fees and rates as set out in Response are guaranteed until September 30, 2014 and any subsequent re-newal term under this Agreement.

4.0 OBSERVANCE OF LAWS, RULES, AND REGULATIONS

Network Provider shall at all times comply with all applicable State laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over services to be provided under this Agreement.

Network Provider, during the performance of this Agreement will comply with all applicable codes and ordinances of the appropriate city, county or state of Texas as they may apply, as these laws may now read or as they may hereafter be changed or amended.

5.0 ASSIGNMENT OF CONTRACT

The services to be performed by the Network Provider shall not be sold, assigned, sublet, or transferred nor shall the Network Provider assign any monies due or to become due to him under any contract entered, in whole or in part, without the written consent of the County pursuant to these specifications.

6.0 WAIVER OF BREACH OR OF VIOLATION OF PROVISIONS

The waiver by either party of a breach or violation of any provision of this agreement shall not be construed to be a waiver of any subsequent breach of the same or other provision hereof.

7.0 ENFORCEABILITY

In the event any provision of this agreement is held to be unenforceable for any reason such unenforceability shall not affect the remainder of this agreement, which shall remain in full force and effect and be enforceable in accordance with its terms.

8.0 DISCLOSURE OF DOCUMENTS

This Agreement and any and all attachments are subject to the Public Information Act under Texas Government Code Chapter 552.

9.0 WRITING REQUIRED

It is understood and agreed that this writing and its attachments represent the entire agreement of the parties and the terms and conditions may not be altered without an express written amendment signed by both parties. Failure to comply with this written agreement shall constitute good cause for a party to terminate this agreement.

10.0 VENUE

Any suit arising out this agreement shall be filed in a court of competent jurisdiction in Nueces County, Texas.

11.0 GOVERNING LAW

This Agreement shall be construed and enforced according to the laws of the State of Texas.

12.0 NOTICE:

All notices, requests or other communications related to this agreement shall be made in writing and may be given by: (a) depositing the same in the United States Mail, postage prepaid, certified, return receipt requested, addressed as set forth in this paragraph; or (b) delivering the same to the party to be notified. Notice given in accordance with (a) hereof shall be effective upon deposit in

the United States Mail. The notice addresses of the parties shall, until changed as provided herein, be as follows:

County County Judge
Nueces County
901 Leopard, Room 303
Corpus Christi, Texas 78401

Network Provider HealthSmart Benefit Solutions, Inc.
222 W. Las Colinas Blvd. Suite 600N
Irving, TX 75039
Attention: Legal Department

13.0 MISCELLANEOUS PROVISIONS

- 13.1 The Network Provider in performing its obligations under this Agreement is acting only as an independent contractor of the Employer, and the rights and responsibilities of the parties shall be determined in accordance with the law relating to independent contractors except as otherwise herein provided.
- 13.2 Nothing in this Agreement, express or implied, is intended to confer upon any other entity or person (including without limitation any claimant or other person receiving or eligible to receive Plan benefits) any rights or remedies under or by reason of this Agreement.
- 13.3 The Administrator agrees to the representations and obligations as set forth in the attached Exhibit "B" HIPAA Business Associate Agreement, herein incorporated in its entirety.
- 13.4 No oral statements of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders to the contract will be made in writing and approved by the Nueces County Commissioners Court.
- 13.5 Termination for Default: Nueces County reserves the right to enforce the performance of this Agreement in any manner prescribed by law or deemed to be in the best interest of Nueces County in the event of breach or default of this Agreement. County reserves the right to terminate the Agreement immediately in the event Network Provider fails to perform in accordance with the Contract Documents, as defined herein. Breach of this Agreement or default authorizes the County to retain services elsewhere and charge the full increase in cost to Network Provider.

13.6 **HOLD HARMLESS AGREEMENT: NETWORK PROVIDER SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS NUECES COUNTY AND ALL ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS OR OTHER CLAIMS OF ANY CHARACTER, AND DESCRIPTION BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OR FAULT OF NETWORK PROVIDER, OR OF ANY AGENT, EMPLOYEE, SUBCONTRACTOR OR SUPPLIER IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT, PROVIDED, HOWEVER, THAT THIS INDEMNITY AND HOLD HARMLESS BY NETWORK PROVIDER EXCLUDES ANY CLAIM PERTAINING TO OR ARISING FROM THE PERFORMANCE OF PROFESSIONAL HEALTHCARE SERVICES (INCLUDING BUT NOT LIMITED TO PHYSICIAN SERVICES) PROVIDED OR PERFORMED BY ANY INDEPENDENT CONTRACTOR OF NETWORK PROVIDER. NETWORK PROVIDER SHALL PAY ANY JUDGEMENT WITH COST THAT MAY BE OBTAINED AGAINST NUECES COUNTY GROWING OUT OF SUCH INJURIES, INCLUDING ATTORNEY FEES.**

13.7 Indemnification Procedure

- (i) As to any matter which County seeks indemnification under this Agreement, County shall promptly notify Network Provider as to (i) the nature of any claims, damages, losses or liabilities asserted by or against County for which the County seeks indemnity hereunder ("Claims") and (ii) the commencement of any suit or proceeding brought to enforce any Claims. Network Provider may assume the defense of any such suit or other proceeding and the County shall cooperate fully, at the Network Providers sole cost and expense, and shall be entitled reasonably to consult with the Network Provider with respect to such defense.
- (ii) County shall assist and cooperate with Network Provider in the conduct of litigation, the making of settlements and the enforcement of any right of contribution to which the Network Provider may be entitled from any person or entity in connection with the subject matter of any litigation subject to indemnification hereunder. In addition, County shall, upon request by Network Provider or counsel selected by Network Provider and at the sole cost and expense of Network Provider, attend hearings and trials, assist in the securing and giving of evidence, assist in obtaining the presence or cooperation of witnesses, make available its own personnel, and effect settlements; and shall do whatever else is reasonably necessary and appropriate in connection with such litigation. County shall not, except at its own cost, voluntarily make any payment, assume any obligation, incur any expense, or settle or compromise any claim without the express approval of Network Provider, in connection with any litigation subject to indemnification hereunder. Notwithstanding the foregoing, the County shall have the right to join in the defense of any litigation or claim at such County's own cost and expense, and, if the County agrees in writing to be bound by and promptly to pay the full amount of any final judgment from which no further appeal may be taken and if the Network Provider is reasonably assured of the County's ability to satisfy such agreement, then, at the option of the Network Provider, such County may take over the defense of such litigation or claim.
- (iii) If the County shall fail to notify the Network Provider within sixty (60) days after its becoming aware of any claims as to (a) the nature of any Claims or (b) the commencement of any suit or proceeding brought to enforce any Claims, or the County shall fail to perform its

obligations as County hereunder or to cooperate fully with Network Provider in Network Provider's defense of any suit or proceeding, then, except where such failure does not have a materially adverse effect on County's defense of such claims, Network Provider shall be released from all of its obligations under section 13.6 of this Agreement with respect to that particular suit or proceeding and any other claims which had been raised in such suit or proceeding.

- 13.8 The undersigned signatory for Network Provider hereby represents and warrants that the signatory is an officer of the organization for which he or she has executed this agreement on behalf of the firm.

EXECUTED THIS _____ DAY OF _____ 2013.

NUECES COUNTY:

Samuel Loyd Neal, Jr.
Nueces County Judge

Attest:

Diana Barrera
Nueces County Clerk

Duly Authorized REPRESENTATIVE FOR
HealthSmart Benefit Solutions, Inc. (Network Provider)

By: _____
Title: