

RESOLUTION 11-004

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO
AMENDING THE CAFETERIA PLAN DOCUMENTS.**

WHEREAS, the City of Ketchum has previously adopted Resolution No. 07-086 entering into a FSA Plan Service Agreement to obtain services associated with preparing and maintaining the City of Ketchum Cafeteria Plan, as well as all other administration services required for such Cafeteria Plan; and

WHEREAS, that the Administrator of the Plan was instructed to take such actions that were deemed necessary and proper in order to implement the Plan, and to set up adequate accounting and administrative procedures to provide benefits under the Plan; and

WHEREAS, the City desires to enter into a Business Associate Agreement with National Benefit Services, LLC for services associated with maintaining the City of Ketchum Cafeteria Plan, as well as all other administration services required for such Cafeteria Plan; and

WHEREAS, certain changes are now required to the plan documents; and

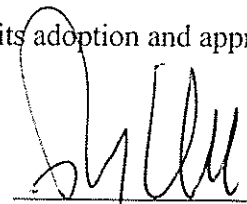
WHEREAS, that attached hereto are true copies of the Cafeteria Plan Amendment, the Summary of Material Modification regarding Michelle's Law, the Mental Health Parity and Addiction Equity Act of 2008, GINA (Genetic Information Nondiscrimination Act of 2008), and the Patient Protection and Affordable Care Act of 2010 (PPACA); and

WHEREAS, that also attached hereto are true copies of the Business Associate Agreement and the 2011 Cafeteria Renewal Contract; and

WHEREAS, effective January 1, 2011 the FSA Administration fee will increase from \$2.50/Monthly/Participant Fee (Minimum of \$40/Month) to \$2.95/Monthly/Participant Fee (Minimum of \$50/Month).

NOW THEREFORE BE IT RESOLVED, that the Ketchum City Council authorizes amending the Cafeteria Plan to include Michelle's Law, the Mental Health Parity and Addiction Equity Act of 2008, GINA (Genetic Information Nondiscrimination Act of 2008), and the Patient Protection and Affordable Care Act of 2010 (PPACA) Amendments and authorizes the Mayor to sign the Cafeteria Plan Amendment, the Business Associates Agreement and the 2011 Cafeteria Renewal Contract.

This Resolution will be in full force and effect upon its adoption and approval this seventh (7th) day of February 2011.



Randy Hall
Mayor

ATTEST:



Sandra Cady, CMC
City Treasurer/Clerk

CAFETERIA PLAN AMENDMENT
FOR
CITY OF KETCHUM CAFETERIA PLAN

ARTICLE I
PREAMBLE

- 1.1 **Adoption and effective date of amendment.** The Employer adopts this Amendment to City of Ketchum Cafeteria Plan ("Plan"). This Amendment is intended to cover the requirements of Michelle's Law, the Mental Health Parity and Addiction Equity Act of 2008, and the Genetic Information Nondiscrimination Act of 2008. It also reflects certain provisions of the Affordable Care Act of 2010 (the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act. (PPACA)). The Employer intends this Amendment as good faith compliance with the requirements of these provisions. This Amendment shall be effective on or after the dates the Employer elects below.
- 1.2 **Supersession of inconsistent provisions.** This Amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.

ARTICLE II
MICHELLE'S LAW

- 2.1 **Effective Date.** This Section is effective for Plan Years beginning on and after January 1, 2010.
- 2.2 **Definition of Dependent.** The Plan's definition of "Dependent" for purposes of an account or arrangement subject to Code Section 105(h) is amended by the addition of the following:

The requirement that a Dependent child have full-time student status in order to extend coverage past a stated age will generally not apply if the child's failure to maintain full-time status is due to a medically necessary leave of absence or other change in enrollment (such as reduction of hours). If the child's treating physician certifies in writing that the child is suffering from a serious illness or injury, and that the leave of absence or other change in enrollment is medically necessary, coverage may continue for up to a year after the date the medically necessary leave of absence or other change in enrollment begins. To be eligible for the extension, the child must be enrolled in the Plan as a full-time student immediately before the first day of the medically necessary leave of absence. This extension of coverage continues to apply if the manner of providing coverage under the Plan changes (such as from self-funded to fully insured) if the changed coverage continues to provide coverage for dependent children. However, this extension does not extend coverage beyond the date that a child fails to meet the dependent eligibility requirements other than the requirement to be a full-time student.

Except for a student who is on a medically necessary leave of absence, full-time student coverage continues between semester/quarters only if the student is enrolled as a full-time student in the next regular semester/quarter. If the student is not enrolled as a full-time student, coverage will be terminated retroactively to the last day of the attended school term.

Effective for Plan Years that begin after September 23, 2010, Michelle's Law will become obsolete for all plans because of changes implemented by the Patient Protection and Affordable Care Act of 2010 (PPACA). Should an Employer exercise its option of adopting the relevant provisions of PPACA early, Michelle's Law will continue until the first plan year following the employer's early adoption. For all other plans, Michelle's Law will remain effective until the first Plan Year beginning after September 23, 2010. See ARTICLE V for a definition of The Patient Protection and Affordable Care Act of 2010.

**ARTICLE III
MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT**

- 3.1 **Effective Date.** This Section is effective for Plan Years beginning on and after January 1, 2010.
- 3.2 **Mental Health Parity and Addition Equity Act.** Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Mental Health Parity and Addiction Equity Act and ERISA Section 712.

**ARTICLE IV
GENETIC INFORMATION NONDISCRIMINATION ACT (GINA)**

- 4.1 **Effective Date.** This Section is effective for Plan Years beginning on and after January 1, 2010.
- 4.2 **Genetic Information Nondiscrimination Act.** Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Genetic Information Nondiscrimination Act.

**ARTICLE V
PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010 (PPACA)**

- 5.1 **Change in Reimbursement.** Effective January 1, 2011, the Plan's definition of "Medical Expense" under the Health Care Reimbursement Arrangement and Health Flexible Spending Account is amended by the addition of the following:

Notwithstanding anything in the Plan to the contrary, a Participant may not be reimbursed for the cost of any medicine or drug that is not "prescribed" within the meaning of Code Section 106(f) or is not insulin. In addition, only medicine or drugs considered to be prescription drugs under Code Section 106(f) (not "over-the-counter" drugs obtained under prescription) shall be able to be purchased by debit and/or credit cards issued to be used in conjunction with the Plan.

- 5.2 **Claims for Reimbursement:** Non-prescription drug costs incurred during the Grace Period related to the 2010 Plan Year shall not be reimbursed.
- 5.3 **Effective Date.** The Section below is effective for Plan Years beginning on and after September 23, 2010 unless otherwise stated.
- 5.4 **Dependent:** The Plan's definition of "Dependent" is amended by the addition of the following:

"Dependent" shall include any child of a Participant who is covered under an Insurance Contract, as defined in the Contract, or under the Health Flexible Spending Account or Health Reimbursement Arrangement as allowed by reason of the Affordable Care Act.

Notwithstanding anything in the Plan to the contrary, a participant's child may remain on the Plan until the end of the calendar year in which the dependent attains age 26. A Participant's "Child" includes his natural child, stepchild, foster child, adopted child, or a child placed with the Participant for adoption. An Employee's Child will be an eligible Dependent until reaching the limiting age of 26, without regard to student status, marital status, financial dependency, or residency status with the Participant or any other person. When the child reaches the applicable limiting age, coverage will end at the end of the calendar year.

The phrase "placed for adoption" refers to a child whom the Employee intends to adopt, whether or not the adoption has become final, who has not attained the age of 18 as of the date of such placement for adoption. The term "placed" means the assumption and retention by such Participant of a legal obligation for total or partial support of the child in anticipation of adoption of the child. The child must be available for adoption and the legal process must have commenced.

5.5 **Dependent.** The Plan's Change in Status provisions are amended by the addition of the following:

Notwithstanding anything in this Section to the contrary, the gain of eligibility or change in eligibility of a child up to the end of the year in which a child attains age 26, as allowed under Code Sections 105(b) and 106 and IRS Notice 2010-38, shall qualify as a change in status.

Note: Qualified Reservist Distributions

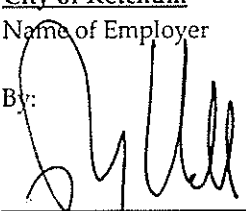
Effective July 16, 2008, an Active Military Participant may request a Qualified Reservist Distribution. Since the HEART provisions are optional, please notify us if you would like to amend your Plan by adding this language to your current Plan Document.

IN WITNESS WHEREOF, this Amendment has been executed to the Cafeteria Plan this 7th
day of February 2011.

City of Ketchum

Name of Employer

By:



Employer

SUMMARY OF MATERIAL MODIFICATIONS
FOR THE
CITY OF KETCHUM CAFETERIA PLAN

MICHELLE'S LAW, GINA, MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT, AND
THE PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010 (PPACA), AMENDMENTS

(1) *General.* This is a Summary of Material Modifications (SMM) regarding your Cafeteria Plan ("Plan"). This is being provided to comply with the provisions of "Michelle's Law" (H.R. 2851), the Mental Health Parity and Addiction Equity Act of 2008, GINA (Genetic Information Nondiscrimination Act of 2008), The Patient Protection and Affordable Care Act of 2010 (PPACA). This Summary of Material Modifications supplements and amends the Summary Plan Description (SPD) previously provided to you. You should retain this document with your copy of the SPD. If you have any questions, contact the Administrator. If there is any discrepancy between the terms of the Plan, as modified, and this Summary of Material Modifications, the provisions of the Plan will control.

(2) *Description of Modifications.* The Employer has amended your Plan as of the dates listed under each section to allow the following:

Extension of Coverage under Michelle's Law

(Effective for plan years beginning on or after October 9, 2009)

Generally, for purposes of a Cafeteria Plan, "dependent" is defined as "any individual who qualifies as a dependent under an insurance contract." Typically, insurance contracts allow for the extension of coverage to a dependent child beyond the defined age so long as full-time student status is maintained.

Under this modification, the requirement that a Dependent child have full-time student status in order to extend coverage past a stated age will generally not apply if the reason for the child's failure to maintain full-time status (either a leave of absence or reduction in enrollment hours) is medically necessary. If the child's treating physician certifies in writing that a serious illness or injury makes a leave of absence or other change in enrollment medically necessary, coverage may continue for up to a year after the date the leave of absence or other change in enrollment begins. Eligibility for continued enrollment in the plan is dependent upon the child's enrollment in the plan as a full-time student immediately before the first day of the leave of absence. So long as the coverage under the plan continues to provide coverage for dependent children, any change in the manner of providing coverage (for instance, from self-funded to fully insured) does not affect this benefit. Coverage under this provision ends on the date the child fails to meet the dependent eligibility requirements for any reason other than the requirement to be a full-time student.

This change does not extend coverage between semesters or quarters if the student fails to enroll as a full-time student the next following semester or quarter, except as medically necessary. Should the child fail to re-enroll following a semester break for any other reason, the coverage will be terminated retroactively to the last day attended.

Effective for Plan Years that begin after September 23, 2010, the above Michelle's Law provisions will become obsolete for all plans because of changes implemented by the Patient Protection & Affordable Care Act of 2010 (PPACA). Should an Employer exercise its option of adopting the relevant provisions of PPACA early, the above Michelle's Law provisions will continue until the first plan year following the employer's early adoption. For all other plans, the Michelle's Law provisions will remain effective until the first Plan Year beginning after September 23, 2010. Please see below for the details about PPACA.

If you have any questions regarding the application of this provision to you, contact the Plan Administrator.

Mental Health Parity and Addiction Equity Act of 2008

(Effective for plan years beginning on or after October 2, 2009)

This amendment requires plans of 50 or more employees that offer coverage for mental health and addiction treatment to comply with the Mental Health Parity and Addiction Equity Act, which provides that financial requirements applicable to mental health or substance use disorder benefits, such as deductibles, copayments, coinsurance, and out-of-pocket expenses, can be no more restrictive than the predominant financial requirements applied to substantially all medical/surgical benefits covered by the plan. Moreover, the Act precludes separate cost sharing requirements that are applicable only with respect to mental health or substance use disorder benefits.

Additional provisions in the law are aimed at ensuring that mental health and addiction treatment are on equal footing with medical and surgical treatments.

If you have any questions regarding the application of this provision to you, contact the Plan Administrator.

Genetic Information Nondiscrimination Act of 2008 (GINA)

(Effective for plan years beginning on or after May 21, 2009)

This amendment requires plans to comply with the Genetic Information Nondiscrimination Act of 2008. The Act is designed to prevent "genetic discrimination," which occurs if individuals or groups are treated unfairly because of differences in their DNA that increase their chances of getting a certain disease. Under the Act, health plans are prohibited from requesting or requiring genetic information from individuals or their family members for plan purposes, or from using genetic information in determining health plan coverage, rates or pre-existing conditions.

If you have any questions regarding the application of this provision to you, contact the Plan Administrator.

**SUMMARY OF MATERIAL MODIFICATIONS
FOR THE
THE PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010 (PPACA), AMENDMENT**

(1) *General.* This is a Summary of Material Modifications (SMM) regarding your Cafeteria Plan ("Plan"). This is being provided to comply with the provisions of The Patient Protection and Affordable Care Act of 2010 (PPACA). This Summary of Material Modifications supplements and amends the Summary Plan Description (SPD) previously provided to you. You should retain this document with your copy of the SPD. If you have any questions, contact the Administrator. If there is any discrepancy between the terms of the Plan, as modified, and this Summary of Material Modifications, the provisions of the Plan will control.

(2) *Description of Modifications.* The Employer has amended your Plan as of the dates listed under each section to allow the following:

Patient Protection and Affordable Care Act of 2010 (PPACA)

Definition of "child":

(Effective September 26, 2010)

A Participant's Child may remain on the Plan until the end of the calendar year in which the dependent attains age 26. A Participant's "Child" includes his natural child, and adopted child, or a child placed with the Employee for adoption. It may also include step children and/or foster children if elected on the Adoption Agreement. A Participant's Child will be an eligible Dependent until reaching the limiting age of 26, without regard to student status, marital status, financial dependency or residency status with the Employee or any other person. When the child reaches the applicable limiting age, coverage will end at the end of the calendar year. If a child gains or regains eligibility due to these new rules, that qualifies as a change in status to change coverage.

Qualified Medical Expense

(Effective January 1, 2011)

A Participant may not request reimbursement for the cost of any medicine or drug that is not "prescribed" as defined in Code Section 106(f) or is not insulin. You may be reimbursed for "over the counter" drugs only if those drugs are prescribed for you for treatment of a medical condition. You cannot use your health debit card to obtain "over-the-counter" drugs even with a prescription. You must submit a manual claim form and a copy of a valid prescription in order to receive reimbursement. If you incur "over the counter" drug costs during the Grace Period, a valid prescription is required.

If you have any questions regarding the application of these provisions, contact the Plan Administrator.



NATIONAL BENEFIT SERVICES, LLC
Customer Care • Knowledge and Expertise • Organizational Excellence

NBS CAFETERIA PLAN

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into effective January 1, 2011, (the Effective Date"), by and between National Benefit Services, LLC, a Utah limited liability corporation ("Business Associate"), on the one hand, and City of Ketchum Cafeteria Plan ("Covered Entity"), with reference to the following recitals:

RECITALS

WHEREAS, Covered Entity is an employee welfare benefit plan that provides health care to the employees of City of Ketchum;

WHEREAS, Business Associate is a third party administrator providing services to the Covered Entity;

WHEREAS, Business Associate's services are required and have been retained in connection with the administration of the benefits offered by Covered Entity;

WHEREAS, in the course of providing services to Covered Entity, Business Associate may perform functions or activities involving the use or disclosure of PHI pertaining to participants and beneficiaries of Covered Entity;

WHEREAS, the Secretary of Health and Human Services has issued regulations requiring a contract between Covered Entity and Business Associate in order to protect against the unauthorized use and disclosure of PHI by Business Associate;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. DEFINITIONS

- a. *Breach.* "Breach" shall have the same meaning as the term "Breach" in 45 CFR §164.402.
- b. *Cafeteria Plan Service Agreement.* "Cafeteria Plan Service Agreement" shall mean any agreement between Business Associate and Covered Entity either executed contemporaneously with, or already in effect at the time of execution of, this Agreement for the provision of services by the Business Associate on behalf of the Covered Entity.
- c. *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

- d. *Notification Procedures.* "Notification Procedures" shall mean those procedures required to be taken by the Business Associate in the event of a Breach of Unsecured PHI under 45 CFR §164.410.
- e. *PHI.* "PHI" shall mean "Protected Health Information" as defined in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- f. *Required By Law.* "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.
- g. *Secretary.* "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- h. *Standards for Security and Privacy.* "Standards for Security and Privacy" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164.
- i. *Undefined Terms.* Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Standards for Security and Privacy.
- k. *Unsecured PHI.* "Unsecured PHI" shall mean "unsecured protected health information" as defined in 45 CFR §164.402.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or disclose PHI other than as permitted or required by the Cafeteria Plan Service Agreement or as Required By Law.
- b. Business Associate agrees to use appropriate administrative, technical, and physical safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate agrees to reasonably safeguard PHI from any intentional or unintentional use or disclosure in violation of this Agreement and the Standards for Security and Privacy. Business Associate agrees to reasonably safeguard PHI to limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure.
- c. Business Associate agrees to comply with the Notification Procedures in the case of Breach. If expediency warrants, Business Associate will notify Covered Entity within 5 business days of any Breach.
- d. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- e. Business Associate agrees to make available to Covered Entity or to the Secretary all internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity. This information will be provided within thirty (30) days, or such other time designated by the Secretary, of receiving a written request stating that the information is required to determine the Covered Entity's compliance with the Standards for Security and Privacy. As used in this term, "internal practices, books and records" include policies and procedures for protection of PHI.

- f. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.
- g. Business Associate agrees to provide to Covered Entity or an Individual, in time and manner within thirty (30) days of receiving written request, information collected in accordance with Section f of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- h. Business Associate agrees to be familiar and comply with any applicable state privacy laws which are more stringent than the Standards for Security and Privacy.
- i. Business Associate agrees to be familiar and comply with any record retention requirements applicable to either Business Associate or Covered Entity and contained in any federal or state law or regulation, including the Employee Retirement Income Security Act of 1974.
- j. Business Associate agrees to provide Covered Entity, or its designated agent, during regular business hours, with access to the records of Business Associate for the purpose of conducting Standards for Security and Privacy compliance audits. For this purpose Business Associate will make available internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity.
- k. Business Associate agrees not to use PHI for any independent purpose or any purpose not specifically authorized by the terms of this Agreement and the Standards for Security and Privacy.
- l. Business Associate agrees to comply, to the extent they do not conflict with the Standards for Security and Privacy, with the terms and provisions of Covered Entity's plan document.
- m. Business Associate is permitted to create, receive, maintain, or transmit electronic PHI on Covered Entity's behalf, but agrees to appropriately safeguard the electronic PHI ("ePHI") as required by 45 CFR §§ 164.306, 164.308(b), & 164.314(a). Business Associate shall (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains, or transmits on behalf of Covered Entity; (ii) ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it; and (iii) report to Covered Entity any security incident of which it becomes aware.
- n. Business Associate is permitted to electronically transmit PHI it creates, receives, or maintains, but agrees to do so pursuant to the Electronic Data Interchange regulations issued by the Centers for Medicare and Medicaid Services.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Cafeteria Plan Service Agreement with National Benefit Services, LLC, provided that such use or disclosure would not violate the Standards for Security and Privacy if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

IV. OBLIGATIONS OF COVERED ENTITY

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

V. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under the Standards for Security and Privacy if done by Covered Entity.

VI. TERM AND TERMINATION

- a. *Term.* The Term of this Agreement shall begin as of the Effective Date, and shall terminate when all PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.
- b. *Termination for Cause.* If Covered Entity determines that Business Associate has violated a material term of this agreement, Covered Entity shall provide Business Associate with an opportunity to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation without unreasonable delay (in no event shall such cure period extend beyond sixty (60) days) Covered Entity shall terminate this agreement.
- c. *Effect of Cafeteria Plan Service Agreement Termination.*
 - (i) Except as provided in subsection (ii) below, upon termination of the Cafeteria Plan Service Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (ii) Destruction of information created or received by Business Associate on behalf of Covered Entity is permitted only in the event such destruction does not conflict with record retention requirements contained in federal or state law, including the Internal Revenue Code or Employee Retirement Income Security Act of 1974. In the event that Business Associate determines that returning or destroying the PHI is not permitted or is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

VII. MISCELLANEOUS

- a. *Regulatory References.* A reference in this Agreement to a section in the Standards for Security and Privacy 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 Standards for Security and Privacy and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. This Agreement may not be amended except by a writing signed by both parties.
- c. *Survival.* The respective rights and obligations of Business Associate under Section VI(c) of this Agreement shall survive the termination of this Agreement.
- d. *Interpretation.* Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Standards for Security and Privacy.
- e. *Counterparts.* This Agreement may be executed in counterparts which, taken together, shall constitute the whole of this Agreement between the parties.
- f. *Assignment.* This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors, heirs, and assigns.
- g. *Conferring Rights or Remedies.* Except as may be expressly set forth herein, the parties do not intend to confer any rights or remedies upon any person other than the parties to this Agreement.
- h. *Counsel.* Each party to this Agreement has had the opportunity to consult with counsel of its choice as to the form and content of this Agreement and the advisability of executing it. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in any interpretation of this Agreement.
- i. *Attorneys' Fees and Costs.* Except as otherwise specifically provided by law, all legal and other costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including without limitation legal and accounting fees, shall be paid by the party incurring such expenses. In the event of any litigation or arbitration between the parties respecting or arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, whether or not any litigation proceeds to final judgment or determination.
- j. *Authorized Signature.* Each party has authorized its undersigned representative whose signature appears below to execute this Agreement on that party's behalf.
- k. *Notices.* Any notice, demand, or request given in accordance with this Agreement shall be given by personal delivery; by messenger delivery; by facsimile transmission; by placing said notice in the United States mail, registered or first-class, postage prepaid; or by sending such notice via an overnight courier service. Notice shall be deemed given when delivered to a party, when the facsimile transmission occurs, or on the date when said notice is deposited in the United States mail, postage prepaid. The current mailing addresses and facsimile numbers where notice may be served upon the parties are:

For Business Associate:
National Benefit Services , LLC
P.O. Box 6980
West Jordan, UT 84084
Facsimile: 801.355.0928

For Covered Entity:
City of Ketchum
P.O. Box 2315
Ketchum, ID 83340
208.726.8234

Any change of address or facsimile will be delivered to the other party within thirty (30) days of the change.

- l. *Indemnification.* Each party shall indemnify, defend, and hold harmless the other party, as well as its affiliates, agents, officers, employees, plan sponsors, plan administrators, directors, and shareholders, from and against any and all claims, suits, hearings, actions, damages, liabilities, fines, penalties (including any civil penalties under the Standards for Security and Privacy), costs, losses, or expenses, including reasonable attorneys' fees, caused by or resulting from any breach of this Agreement, including but not limited to any misconduct, error, omission, or other unauthorized act by the party in the performance of obligations under this Agreement, or by the party's affiliates, agents, officers, employees, sponsors, directors, and shareholders, except to the extent that such alleged misconduct, act, error, omission, or other unauthorized or improper act is primarily attributable to another party to this Agreement.
- m. *Severability.* Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement, each of which shall continue to be valid and binding upon the parties.
- n. *Waiver.* A waiver by any party of any of the terms and conditions of this Agreement in any one instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach thereof, nor shall it be deemed a waiver of performance of any other obligation hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year above written.

BUSINESS ASSOCIATE:

By: Paul R. Lovell
Name: Paul R. Lovell
Title: President
Date: January 1, 2011

COVERED ENTITY:
City of Ketchum
(Authorized Signer for Employer)

By: [Signature]
Name: RANDY HALL
Title: MAYOR
Date: 2/7/11



2011 Cafeteria Renewal Contract

Dear Sandy Cady:

National Benefit Services values our partnership in administering your cafeteria plan. Below you will find your 2011 schedule of benefits and associated fees. In order for NBS to continue services for 2011, please carefully review the schedule and reply as directed at the bottom by December 31st.

Company Name: City of Ketchum
Company Address: P.O. Box 2315
Ketchum, ID 83340
PYE: 12/31/2010
Carrier Name: National Benefit Services

This document confirms placement of the following coverage(s):

Cafeteria Administration

Rates will be effective on: 1/1/2011
For a period of: 12 months

Rates/Fees for the above-referenced coverage(s) are:

FSA Administration:

\$ 2.95 PPM administrative fee
\$ 50.00 Minimum monthly fee
\$ 150.00 Amendment fee

HRA Administration:

\$ 2.25 PPM administrative fee

\$ 50.00 Minimum monthly fee

\$ 150.00 Amendment fee

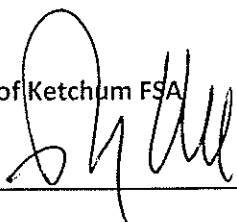
By replying to this email and completing the information below, I as an authorized representative accept this confirmation of coverage. I acknowledge agreement with the rates and benefits described above and that subsequent contract(s) shall conform to this document unless otherwise agreed to in writing.

Please reply to this email, and complete the information below before sending.

Plan Name:

City of Ketchum FSA

Authorized Representative:



Broker/Advisor Name:

Broker Agency Name:
