

Mayor Timothy M. Keller

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

INTER-OFFICE MEMORANDUM

March 12, 2025

TO: Brook Bassan, President, City Council

FROM: Timothy M. Keller, Mayor



SUBJECT: Approval for Contract – Benefits Claims Intelligence LLC


The City of Albuquerque's Department of Human Resources is requesting a contract with Benefits Claims Intelligence, LLC (BCI).

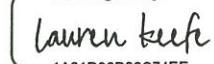
After thorough evaluation and consideration, the City of Albuquerque has decided to contract with BCI to conduct a forensic claims audit of the City's self-funded/self-insured medical claims administered by the City's previous claims administrator, Presbyterian Health Plan. The audit is required by the City's fiduciary responsibility to the self-funded/self-insured plan and the employee/participants in the plan. We are committed to providing comprehensive and competitive benefits to support the health of our employees and their dependents and the financial integrity of the plan.

SUBJECT: Approval for Contract – Benefits Claims Intelligence LLC

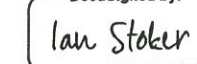
Approved:

Approved as to Legal Form:

 3/31/25
Samantha Sengel, EdD Date
Chief Administrative Officer

DocuSigned by:
 3/28/2025 | 9:40 AM MDT
1A21D96D32C74EE...
Lauren Keefe Date
City Attorney

Recommended:

DocuSigned by:
 3/24/2025 | 10:34 AM MDT
F98A9B9E9D744BE...
Ian Stoker Date
Director

Cover Analysis

1. What is it?

A Professional/Technical Contract between the City of Albuquerque's Human Resources Department and the vendor, Benefits Claims Intelligence LLC.

2. What will this piece of legislation do?

This Legislation will allow the City of Albuquerque's Human Resources Department to enter into a contract with Benefits Claims Intelligence LLC (BCI), so that BCI can audit previous years' medical claims paid to the City's health insurance vendor.

3. Why is this project needed?

This project is needed to ensure that the City has paid out the correct amounts for previous health insurance claims.

4. How much will it cost and what is the funding source?

The total cost for this contract is \$397,850. The funding source is Fund 710: Group Self Insurance Fund.

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

There is no revenue source associated with this contract.

6. What will happen if the project is not approved?

The City will be unable to conduct the audit and fulfill its fiduciary obligation.

7. Is this service already provided by another entity?

No, this service is not provided by another entity.

FISCAL IMPACT ANALYSIS

TITLE: Benefits Claims Intelligence P/T Contract

R: O:

FUND: 710

DEPT: 4771000

- ☒ No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- ☐ (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2025	Fiscal Years 2026	2027	Total
Base Salary/Wages				-
Fringe Benefits at		-		-
Subtotal Personnel	-	-	-	-
Operating Expenses		-	-	-
Property		-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
<input checked="" type="checkbox"/> Estimated revenues not affected				
<input type="checkbox"/> Estimated revenue impact				0
Revenue from program				
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.

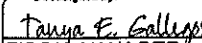
* Range if not easily quantifiable.

Number of Positions created: n/a

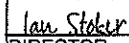
COMMENTS: The amount of this contract is \$397,850; \$77,000 will be expended in FY2025, with the remaining \$320,850 being expended in FY2026. This contract will be funded out of Fund 710 in Contractual Services (527500). The Human Resources Department is not requesting an increase in the budgeted appropriation for this Fund.

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

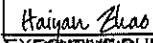
PREPARED BY:


DocuSigned by:

 Tanya Gallegos
 FISCAL MANAGER
 Tanya Gallegos

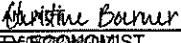
APPROVED:

DocuSigned by:

 Ian Stoker
 DIRECTOR
 Ian Stoker

REVIEWED BY:

DocuSigned by:

 Haiyan Zhao
 EXECUTIVE BUDGET ANALYST
 Haiyan Zhao

DocuSigned by:

 Lawrence Davis
 BUDGET OFFICER
 Lawrence Davis

Signed by:

 Christine Boerner
 CHIEF ECONOMIST
 Christine Boerner

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Albuquerque, New Mexico, a municipal corporation ("City"), and, BENEFITS CLAIMS INTELLIGENCE LLC, 5050 Poplar Ave, Suite 2020, Memphis, TN 38157 ("Contractor").

RECITALS

WHEREAS, the City desires, through its Legal Department, to engage Contractor to render the auditing services described in Section 1 below and Exhibit A to this Agreement, attached hereto and incorporated by reference herein;

WHEREAS, this contract is exempt from competitive bidding under ROA 1994, Section 5-5-20(U);

WHEREAS, the City desires to engage the Contractor to render certain services in connection therewith and the Contractor is willing to provide such services.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto mutually agree as follows:

1. Scope of Services. The Contractor shall provide the services in conjunction and association with the Legal Department for the following: The Contractor shall administer a forensic audit on the medical claims as provided in Exhibit A ("Services"), which is hereby incorporated into and made a part of this Agreement by reference. The Contractor is retained as a non-discoverable consulting expert as provided in Rule 1-026(B)(6)(c) NMRA 2022. In the event of a conflict between the terms of this Agreement and Exhibit A, this Agreement shall control. City shall provide in writing to Contractor the names and contact for those City employees to whom Contractor shall provide privileged information involving statements, reports, data, and information with respect to the forensic audit.

2. Term of Agreement. The term of this Agreement shall start on the date of final execution of this Agreement and shall end by October 31, 2025, unless otherwise terminated as provided herein.

3. Compensation and Method of Payment.

A. Compensation. For performing the Services specified in Section 1, the City agrees to pay the Contractor up to the amount of Three Hundred Ninety-Seven Thousand, Eight Hundred Fifty and 00/100 Dollars (\$397,850.00), which amount excludes any applicable gross receipts tax. This amount shall constitute complete compensation for the Contractor's Services, including all expenditures made and expenses incurred by the Contractor in performing the Services.

B. Method of Payment. Such amount shall be payable in three lump sums in accordance with Exhibit A. The first lump sum of Seventy-Seven Thousand and 00/00 Dollars (\$77,000.00) is due upon execution of this agreement and receipt of BCI's invoice for the amount. The second lump sum of Two Hundred Seventy-Two Thousand, Six Hundred Fifty and 00/100

Dollars (\$272,650.00) is due upon completion of “Phase 2: Forensic Audit – part 1” as described in Exhibit A and receipt of BCI’s invoice for the amount. The third lump sum of Forty-Eight Thousand, Two Hundred and 00/100 dollars (\$48,200.00) is due upon completion of “Phase 2: Forensic Audit – part 2” as described in Exhibit A and receipt of BCI’s invoice for the amount. All payments shall be issued upon receipt by the City of properly documented requisitions for payment as determined by the budgetary and fiscal guidelines of the City and on the condition that the Contractor has implemented the products, completed the deliverables, and accomplished the Services to the satisfaction of the City.

C. Appropriations. Notwithstanding any other provision in this Agreement, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, or if the City Council unappropriates or deauthorizes funds during a fiscal year, this Agreement may be terminated upon thirty (30) days’ written notice given by the City to all other parties to this Agreement. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's determination as to whether sufficient appropriations are available or have been made shall be accepted by all parties and shall be final.

D. Responsibility to Monitor Contract. The Contractor is responsible for ensuring that the Contractor does not bill for Services in an amount that exceeds the total contract amount. With each invoice submitted to the City, the Contractor shall include a ledger report that identifies the total amount the Contractor has billed for Services under this Agreement and any supplements to this Agreement. If at any time the Contractor determines that payment for Services may or will exceed the total amount provided in this Agreement and any supplements to this Agreement, the Contractor shall notify the City in writing, as soon as possible after making that determination. If the Contractor’s billing exceeds the amount of this Agreement and any supplements, the City may stop or delay payment, or the Services may be ceased or delayed at the City’s request.

4. Independent Contractor. Neither the Contractor nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the Services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

5. Personnel.

A. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of or have any contractual relationships with the City.

B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

C. None of the work or the Services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. **Indemnity.** The Contractor agrees to defend, indemnify, and hold harmless the City and its officials, agents, and employees from and against any and all claims, suits, demands, actions, or proceedings of any kind brought against any of those persons because of any injury or damage received or sustained by any person, persons, or property, which injury is arising out of or resulting from the Contractor's provision of goods or Services under this Agreement, or by reason of any asserted act or omission, neglect, or misconduct of the Contractor or Contractor's agents, employees or subcontractors, or the agents or employees of any subcontractor of Contractor, whether direct or indirect. The defense and indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

7. **Liability.** The City acknowledges and agrees that the City shall be solely responsible for its use of the statements, reports, data, and information provided to it by Contractor in fulfillment of Contractor's Services under this Agreement.

8. **Insurance.** The Contractor shall procure and maintain at its expense until final payment by the City for Services covered by this Agreement, insurance policies in the kinds and amounts provided below, written with insurance companies authorized to do business in the State of New Mexico, which policies cover all operations under this Agreement, whether Services or operations are performed by Contractor or its agents. Before commencing the Services, and upon renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates of insurance, in form satisfactory to the City, showing that Contractor has complied with this Section. All certificates of insurance shall be provided upon execution of this Agreement and upon any cancellation or change in the policy, and the certificates shall provide that thirty (30) days' prior written notice of any cancellation, material change to, or non-renewal of a policy be given to:

Risk Manager
Department of Finance and Administrative Services
City of Albuquerque
P.O. Box 470
Albuquerque, New Mexico 87103

Various types of required insurance may be written in one or more policies. With respect to all applicable coverages, the City shall be named an additional insured by endorsement onto the policy. Proof of this additional insured relationship shall be evidenced on the Certificate of Insurance (COI) and on the insurance endorsement. All coverages afforded shall be primary with respect to operations provided. If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made. Kinds and amounts of insurance required are as follows:

A. **Commercial General Liability Insurance.** A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$2,000,000.00 Per Occurrence

\$2,000,000.00 Policy Aggregate

\$1,000,000.00 Products Liability/Completed Operations

\$1,000,000.00 Personal and Advertising Injury

\$5,000.00 Medical Payments

The policy of insurance must include coverage for all operations performed for the City by the Contractor, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

B. Workers' Compensation Insurance: Workers' Compensation Insurance for the Contractor's employees when required by, and in accordance with, the provisions of the Workers' Compensation Act of the State of New Mexico ("Act"). The Contractor acknowledges that it is responsible for complying and agrees to comply with the Act and related rules in performing under this Agreement. The Contractor agrees to provide proof to the City of any Workers' Compensation coverage the Contractor is required to carry at any point during the term of this Agreement. The City may terminate this Agreement if the Contractor fails to comply with this provision.

C. Professional Liability (Errors and Omissions) Insurance. Professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate of \$1,000,000.

D. Increased Limits. If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

9. Discrimination Prohibited, Civil Rights Compliance. In performing the Services required hereunder, the parties hereto shall not discriminate against any person on the basis of race, color, religion, sex, gender, gender identity, sexual orientation, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, national origin, ancestry, age, physical or mental handicap or serious medical condition, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended, and as defined in the New Mexico Human Rights Act. The Contractor agrees to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, the New Mexico Equal Pay for Women Act, Titles VI and VII of the U.S. Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, the Pregnant Workers Fairness Act, and all federal, New Mexico and City laws and rules related to the enforcement of civil rights. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City's Office of Civil Rights.

10. ADA Compliance. In performing the Services required under the Agreement, the Contractor agrees to meet all the requirements of the Americans With Disabilities Act of 1990, the Pregnant Workers Fairness Act, the New Mexico Human Rights Act, and all applicable rules and

regulations (the “ADA”) that are imposed directly on the Contractor or that would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify, and hold harmless the City, its officials, agents, and employees from and against any and all claims, actions, suits, or proceedings of any kind brought against any of those parties as a result of any act or omission of the Contractor or its agents in violation of the ADA.

11. Conflict of Interest. No officer, agent or employee of the City will participate in any decision relating to this Agreement which affects that person's financial interest, the financial interest of his or her spouse or minor child or the financial interest of any business in which he or she has a direct or indirect financial interest.

12. Interest of Contractor. The Contractor agrees that it presently does not have, and shall acquire no direct or indirect interest which conflicts in any manner or degree with the performance of the terms of this Agreement. The Contractor will not employ any person who has any such conflict of interest to assist the Contractor in performing the Services.

13. No Collusion. The Contractor represents that this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud, and in good faith. The Contractor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or will be, offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City for the purpose or with the intention of securing: this Agreement; a subsequent Agreement; more favorable treatment with respect to this Agreement; or more favorable treatment with respect to making any determinations regarding performance under this Agreement.

14. Debarment, Suspension, Ineligibility and Exclusion Compliance. The Contractor certifies that it has not been debarred, suspended or otherwise found ineligible to receive funds by any agency of the executive branch of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States. The Contractor agrees that should any notice of debarment, suspension, ineligibility or exclusion be received by the Contractor, the Contractor will notify the City immediately.

15. Reports and Information. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement. Unless otherwise authorized by the City, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the City. Notwithstanding the foregoing, the parties acknowledge and agree that Contractor’s software, including without limitation any copyrighted code in such software used to produce statements, reports, data, and information for the City in fulfillment of Contractor’s Services is confidential and proprietary to Contractor, shall not be provided to the City as part of Contractor’s Services, and shall not constitute a statement, report, data, or information subject to disclosure to the City under this Agreement.

16. Public Records. The parties acknowledge that the City is a government entity subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding any other provision of this Agreement, the City shall not be responsible

to Contractor for any disclosure of Confidential Information pursuant to that Act or pursuant to the City's public records act laws, rules, regulations, instructions or any other legal requirement. Notwithstanding the foregoing the City agrees to give notice to Contractor of any request for any statement, report, data, or information that would compromise the proprietary software of Contractor so Contractor can take whatever action necessary to protect its rights prior to disclosure provided that Contractor indemnifies the City if any such action should cause the City to violate the Public Records Act.

17. Establishment and Maintenance of Records. Records shall be maintained by the Contractor in accordance with applicable laws and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of four (4) years after receipt of final payment under this Agreement.

18. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, Contractor shall make all of the Contractor's records with respect to all matters covered by this Agreement available to the City for examination. The Contractor shall allow the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data related to all matters covered by this Agreement. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and to appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 9 of the Albuquerque City Charter.

19. Ownership, Publication, Reproduction and Use of Material. No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

20. Compliance With Laws. In performing the Services required hereunder, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, state and local governments.

21. Changes. The City may, from time to time, request changes in the Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in written amendments to this Agreement.

22. Assignability. The Contractor shall not assign or transfer any interest in this Agreement, whether by assignment or novation, without the prior written consent of the City.

23. Termination for Cause. If, for any reason, the Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, or if the Contractor violates any provision of this Agreement, the City has the right to terminate this Agreement by giving written notice of the termination to the Contractor and specifying a termination effective date at least five (5) days after notice is provided. In such event, all finished or unfinished documents, data, maps,

studies, surveys, drawings, models, photographs, and reports prepared by the Contractor under this Agreement shall, at the option of the City, become the City's property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed under the Agreement. Notwithstanding any other provision of this section, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

24. Termination for Convenience of City. The City may terminate this Agreement at any time by giving at least fifteen (15) days' notice of the termination in writing to the Contractor. If the Contract is terminated as provided herein, the Contractor will be paid an amount that bears the same ratio to the total compensation provided for under the Agreement as the Services actually performed bear to the total Services required under the Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, the Termination for Cause provision shall apply.

25. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

26. Enforcement. Each party agrees to pay to the other all costs and expenses, including reasonable attorneys' fees, incurred by the other party in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

27. Entire Agreement. This Agreement, including any explicitly stated and attached exhibits, constitutes the full, final, and entire agreement of the parties and incorporates all of the conditions, agreements, understandings and negotiations between the parties concerning the subject matter of this contract, and all such agreements, conditions, understandings and negotiations have been merged into this written Agreement. No prior condition, agreement, understanding, or negotiation, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in writing in this Agreement.

28. Applicable Law and Venue. This Agreement is governed by and construed and enforced in accordance with the laws of the State of New Mexico and the City of Albuquerque. The venue for actions arising in connection with this Agreement is Bernalillo County, New Mexico.

29. Force Majeure. Neither party shall be liable for failure to perform its obligations under this Agreement, for any loss or damage of any kind, or for any consequences resulting from delay or inability to perform, due to causes beyond the reasonable control and without the fault or negligence of the party. Such causes ("Force Majeure Events") include, but are not restricted to: acts of God or the public enemy; acts of State, Federal or local governments; shortage or inability to obtain materials; breakdowns or delays of carriers, manufacturers, or suppliers; freight embargoes; theft; fire; flood; epidemics or pandemics; quarantine restrictions; strikes; lockouts; unusually severe weather; and defaults of subcontractors due to any of the above. If a Force Majeure Event causes any failure to perform, the nonperforming party shall promptly inform the other party in writing of such event, indicating the expected duration thereof and the period for

which suspension in performance is requested. The parties shall consult with each other in good faith with respect to modification of this Agreement to reflect such suspension or other changes (if any) desired by the other party as a result thereof. The rights and remedies of the parties provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

30. Electronic Signatures. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7, NMSA 1978. The Parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

31. HIPAA Business Associate Agreement. The Parties agree to be bound by the terms of the HIPAA Business Associate Agreement attached as Exhibit B, which is hereby incorporated into and made a part of this Agreement by reference.

32. Approval Required. This Agreement shall not become binding upon the City until approved by the highest required City approval authority.

[SIGNATURES ON NEXT PAGE]

Exhibit A

City of Albuquerque – Forensic Audit and Recovery Scope of Work

Phase 1: Data and Resource Provisioning

- Estimated Time: 60 days. This would include:
 - Presbyterian Claims Data Acquisition and ETL* into the BCI AI platform
 - Acquisition and ETL of the Machine Readable (MR) data
 - Acquisition and ETL of Banking Records for all accounts *associated with the plan*.
 - \$77,000 {due upon execution}

* - 'ETL' – 'Extract, Transform, Load' – the process of unpacking data and storing it in a database.

Data and Resource Provisioning includes allocation of hardware and necessary digital resources to move required client data into the BCI technology platform. This also includes personnel, and setup of any other support services.

Phase 2: Forensic Audit - part 1

- Estimated Time: 60 days
 - Level 1 (Compliance Audit), assessment of the city's medical benefit plan. This would include:
 - Standard and Advanced analytics applied
 - Reconciliation and analytics of Banking data with Claims data
 - Data presentation and visualization (reports in MS Excel).
 - *Initial assessment report to the City of Albuquerque*
 - \$272,650

Forensic Audit part 1 includes an assigned audit team and technology support; these teams, working together, will render an initial set of standard analytics that BCI has developed that are designed to identify both transactions that should not have been paid, and transactions that are questionable, either from a policy standpoint, a medical standpoint, or other issues. Issues found in this assessment are referenced both as foundational points for recovery planning and as a roadmap for Forensic Audit – part 2

Phase 2: Forensic Audit – part 2

- Estimated Time: 2-4 weeks.
 - Level 2 (Forensic Audit), specific investigatory analytics based on Forensic Audit part 1 results
 - Results inform both recovery planning and plan (re)negotiation efforts, restructuring, etc.

- Billed at: \$48,200.00

Forensic Audit part 2 is performed by a smaller, specialized team with a focus on trending and identifying behaviors that contribute to losses, specific plan shortcomings, challenges associated with negotiated arrangements, and other issues that may not be directly identified through the standard analytics package. The results of Forensic Audit part 2 are also critical to the creation and tuning of an effective recovery plan, as well as informative to third-party resources, expert witnesses, etc.

EXHIBIT B

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (the “**BAA**”) to the underlying agreement (the “**Underlying Agreement**”) between the BENEFITS CLAIMS INTELLIGENCE LLC, located at 5050 Poplar Ave, Suite 2020, Memphis, TN 38157, listed on the signature page (“**Contractor**”), and the City of Albuquerque (“**City**”), located at 1 Civic Plaza NW, Albuquerque, NM 87102 is effective as of the effective date of the Underlying Agreement (the “**Effective Date**”). This BAA supplements and is made a part of any agreements between the City and Contractor involving the use or disclosure of Protected Health Information (“**PHI**”).

Under the Underlying Agreement, and depending upon the circumstances of the protected health information, as defined below, a party is receiving from, creating, maintaining, or transmitting on behalf of the other party certain data that would constitute “protected health information” within the meaning of the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Rule”) the City may be either a Covered Entity (CE) or a Business Associate (BA), as such terms are defined within HIPAA, 45 CFR Parts 160 and 164. The terms of this BAA will apply to the City in its capacity as either a Covered Entity or Business Associate in the performance of its obligations and rights under the Underlying Agreement. The terms of this BAA will apply to the Contractor but only to the extent that the Contractor performs any action under the Underlying Agreement which makes it fall within the definitions of Covered Entity or Business Associate as those terms are defined within HIPAA, 45 CFR Parts 160 and 164.

WITNESSETH:

WHEREAS, the parties have entered into the Underlying Agreement, whereby the Contractor shall provide to the City, services associated with the forensic audit; and

WHEREAS, as part of performing the forensic audit, the parties may exchange certain information pursuant to the terms of the Underlying Agreement, some of which may constitute PHI, as defined below; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein the parties hereto do covenant and agree as follows:

1. DEFINITIONS

The following terms used in this BAA shall have the same meaning as those terms in the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Pub. L. No. 104-191: Covered Entity, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Required by Law, Secretary, Security Incident, Security Rule, Subcontractor, Unsecured Protected Health Information, and Use. Any other undefined term with a capital letter shall have the same meaning as such term in the HIPAA Rules (defined below in Section 1.3).

1.1. **“Breach”** shall mean any unauthorized acquisition, access, use or disclosure of protected health information (PHI) that does not meet one of the three exceptions, as described in 45 CFR §164.402: (a) unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of BA or CE, made in good faith, and within the scope of authority and which does not result in further use or disclosure, (b) inadvertent disclosure from one authorized person to another within either CE or BA which does not result in further access or disclosure, or (c) disclosure of PHI where either CE or BA has a good faith belief that unauthorized person to whom disclosure was made would not reasonably have been able to retain the information.

1.2. **“Business Associate”** shall generally have the same meaning as the term “business associate” at 45 CFR §160.103. Business Associate shall be referred to throughout this BAA as BA, and may be either the City or the Contractor depending on the circumstances.

1.3. **“Covered Entity”** shall generally have the same meaning as the term “covered entity” at 45 CFR §160.103. Covered Entity shall be referred to throughout this BAA as CE, and may be either the City or the Contractor depending on the circumstances.

1.4. **“HIPAA Rules”** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 including the Health Information Technology for Economic and Clinical Health Act (**“HITECH Act”**) codified at 42 U.S.C. §§17921-7954 and the Final Omnibus Rule (78 Fed. Reg. 5566) (Final Rule) as in effect or as amended from time to time.

1.5. **“Protected Health Information”** or **“PHI”** shall have the meaning given to such term in 45 CFR §160.103 and shall include, without limitation, “Individually Identifiable Health Information,” defined by 45 CFR §160.103 as any information, whether oral or recorded in any form or medium, created or received by Business Associate from or on behalf of Covered Entity: (a) that relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual, and (b) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.

2. **PURPOSE.** The Parties hereby agree that except as otherwise limited in this BAA, BA shall be permitted to use or disclose PHI provided or made available from CE to perform any function, activity or service for, or on behalf of, CE as specified in the Underlying Agreement.

3. **OBLIGATIONS OF BUSINESS ASSOCIATE.** BA covenants and agrees that it shall:

3.1. Not use or further disclose PHI other than as permitted or required under this BAA and the Underlying Agreement, or as required by law.

3.2. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this BAA and the Underlying Agreement.

3.3. Maintain a written information security program consistent with HIPAA standards that includes administrative, technical, and physical safeguards to maintain the security of and prevent

unauthorized access to Covered Entity's PHI.

3.4. Conduct a security risk assessment in compliance with HIPAA and the HITECH Act.

3.5. Notify CE of any use or disclosure of PHI not provided for by this BAA and the Underlying Agreement of which it becomes aware, including Breaches of unsecured PHI as required at 45 CFR §164.410, and any Security Incident of which it becomes aware as soon as possible and no later than within three business days of becoming aware of such Breach. Subsequent investigation shall include to the extent feasible, a prompt report to CE of the identification of each individual whose unsecured PHI has been, or is reasonably believed by BA to have been accessed, acquired, or disclosed during such Breach, and any other information that CE deems necessary to meet its breach notification obligations under HIPAA.

3.6. In the event of a Breach, BA shall in consultation with CE, mitigate to the extent practicable any harmful effect of such Breach that is known to BA.

3.7. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of BA agree to the same restrictions, conditions, and requirements that apply to it with respect to such information.

3.8. Make available PHI in a designated record set to CE or to an individual respondent as necessary to satisfy CE's obligations under 45 CFR §164.524.

3.9. Make any amendment(s) to PHI in a designated record set as directed or agreed to by CE pursuant to 45 CFR §164.526, or to an individual respondent as necessary or take other measures as necessary to satisfy its obligations under 45 CFR §164.526.

3.10 Maintain and make available the information required to provide an accounting of disclosures to CE or to an individual respondent as necessary to satisfy its obligations under 45 CFR §164.528.

3.11 To the extent CE is to carry out one or more of BA's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to its performance of such obligation(s).

3.12 Adopt and implement a policy and procedure for adhering to the HIPAA rules if BA performs marketing or fundraising services on behalf of CE and uses or discloses PHI in furtherance of those services, and shall remove the names of all Individuals who have expressly opted out of receiving future marketing or fundraising materials from BA on CE's behalf. If CE receives information of an Individual's request to opt out of future mailings, CE agrees to notify BA of such request as soon as reasonably practicable.

3.13 Make its internal practices, books, records and policies and procedures and documentation requirements relating to the use and disclosure of PHI received from, or created by, CE on behalf of BA available to the Department of Health and Human Services (DHHS), Office of Civil Rights (OCR) for purposes of determining compliance with the HIPAA Rules; and

3.14 In the event BA receives a valid order issued by a judicial, governmental or regulatory entity or mandate for release of PHI, BA shall be permitted to disclose such PHI after notifying CE of the request as soon as reasonably practicable. At the sole cost of CE, BA will provide reasonable assistance to CE in seeking a protective order. BA shall, to the extent reasonably practicable, consult with CE prior to responding and shall advise CE of how it intends to respond as soon as such determination is made.

4. PERMITTED USES AND DISCLOSURES BY CE.

4.1 CE may only use or disclose PHI as necessary to perform the services set forth in the Underlying Agreement, including for reporting on and evaluating the network or as required by law.

4.2 CE may use or disclose PHI as required by law.

4.3 CE agrees to make uses and disclosures and requests for PHI consistent with the minimum necessary standard set forth in 42 CFR §164.502(b). CE will consult with BA as necessary to determine what is the minimum necessary in any given situation.

4.4 CE may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by BA.

4.5 CE may use PHI in its possession to provide data aggregation services relating to the operations of BA, as provided for in 45 CFR §164.501.

4.6 CE may disclose PHI in its possession to third parties (subcontractors) for the purpose of its proper management and administration or to fulfill any of its present or future legal responsibilities provided that the disclosures are required by law or CE has entered into an agreement with subcontractor for the protection and use of PHI with substantially similar terms to this one.

4.7 CE may disclose PHI for treatment, payment, or health care operations, provided such disclosure is consistent with 42 CFR §164.506.

5. NOTIFICATION OF PRIVACY PRACTICES AND RESTRICTIONS.

5.1 CE shall notify BA of any changes in, or revocation of, the permission by an individual to use or disclose his/her PHI, to the extent that such changes may affect BA's use or disclosure of PHI.

5.2 CE shall notify BA of any restriction on the use or disclosure of PHI that CE has agreed to or is required to abide by pursuant to 45 CFR §164.522, to the extent that such restriction may affect BA's use or disclosure of PHI.

6. TERMINATION. Notwithstanding any other provision under this BAA and pursuant to

federal law, BA and CE agree that this BAA and the Underlying Agreement may be terminated without penalty with thirty (30) days written notice.

7. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS. CE or BA may terminate this BAA and the Underlying Agreement, effective immediately, if (a) CE or BA is named as a defendant in a criminal proceeding for a violation of HIPAA or (b) a finding or stipulation that CE or BA has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which CE or BA has been named.

8. RETURN OR DESTRUCTION OF PHI. If upon termination, cancellation, or expiration of the Underlying Agreement, it will be infeasible to return or destroy any or all PHI, as it is needed to provide continuing care and services, or it is contained in another record which is required to be kept, the terms of this BAA shall extend to all such PHI and any further use or disclosure of the PHI by BA shall be limited to that purpose which renders the return or destruction of the PHI infeasible, namely providing continuing care and services, or other required functions. If returning the PHI to CE is not feasible, BA shall destroy any and all PHI maintained by BA in any form whatsoever, including any copies thereof, with the exception of historical data which must be maintained in order to provide continuity of service or other required function. Should the return or destruction of the PHI be determined by BA to not be feasible, the terms of this BAA shall extend to the PHI until otherwise indicated by CE, and any further use or disclosure of the PHI by BA shall be limited to that purpose which renders the return or destruction of the PHI infeasible. Destruction of PHI must be in accordance with HHS standards and processes for rendering PHI unusable, unreadable, or indecipherable to unauthorized individuals so that it is no longer Unsecured PHI. BA shall complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of termination, cancellation, or expiration of the Underlying Agreement. Within such thirty (30) days, BA shall certify in writing to CE that such return or destruction has been completed, will deliver to CE identification of PHI for which return or destruction is infeasible and, for that PHI, will certify that it will only use or disclose such PHI for those purposes that make return or destruction infeasible.

9. LIMITATION OF LIABILITY. Any liability incurred in connection with this BAA is subject to the immunities and limitations of the New Mexico Tort Claims Act, §41-4-1 et seq., NMSA 1978, as amended.

10. NO THIRD-PARTY BENEFICIARIES. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than CE, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

11. TERM. This BAA shall become effective on the Effective Date and shall expire when the entire PHI is destroyed or returned pursuant to Section 8 above. The Parties agree that Sections 2, 3, 4, 9 and 10 of this BAA shall survive the termination or expiration of this BAA. Either Party may terminate this BAA immediately in the event of (a) a material breach that cannot reasonably be cured within fourteen days, (b) repeated breaches of the same material obligation or (c) a breach that would expose the non-breaching Party to civil or criminal liability or would otherwise cause a violation of applicable laws, rules, regulations or accreditation standards applicable to the non-breaching Party.