

## **COBRA SERVICES AGREEMENT**

This Agreement made effective as of April 1, 2017 (the "Effective Date"), by and between THE TEXAS A&M UNIVERSITY SYSTEM, 301 Tarrow, 5th Floor, College Station, TX 77840 (the "Employer"), and P&A ADMINISTRATIVE SERVICES, INC., 17 Court Street, Suite 500, Buffalo, NY 14202-3294 ("P&A").

### **WITNESSETH:**

**WHEREAS**, the Employer maintains several group health plans for the benefit of its eligible employees; and

**WHEREAS**, the Employer has various obligations and responsibilities under the federal legislation commonly referred to as "COBRA" with respect to the administration of its group health plans;

**WHEREAS**, the Employer desires to use P&A to assist the Employer in meeting its COBRA compliance responsibilities, and P&A desires to provide such services upon certain terms and conditions;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto, with the intention of being legally bound hereby, covenant and agree as follows:

1. **COBRA Administration.** P&A agrees to assist the Employer in meeting its responsibilities under the COBRA law, which requires the Employer to offer continuation coverage to certain individuals who lose coverage under one or more group health plans of the Employer. P&A shall provide this assistance by providing those administrative services described in Section 2 of this Agreement with respect to those group health plans and coverage options listed on Schedule A (collectively referred to as the "Plan").

2. **Services to be Provided by P&A.**

(a) Upon execution of this Agreement by the parties, P&A shall provide the following services:

(1) P&A shall make available to the Employer electronically or by another method that is mutually agreeable to the parties (i) a COBRA procedures manual, and (ii) forms for the Employer to use in providing information to P&A pursuant to subsections 3(b) and 3(c) of this Agreement;

(2) With respect to each former employee and other individual receiving COBRA continuation coverage under the Plan (a "COBRA Continuant") on the Effective Date, P&A shall receive by electronic download from the Employer, the information that P&A deems necessary to discharge its responsibilities under this Agreement, including but not limited to name, address, Social Security number, plan information, coverage information (including information for covered dependents) and costs, and enter that information into P&A's administrative software system to

create an electronic file with respect to the subject matter of this Agreement; and

(3) P&A shall send correspondence to each such COBRA Continuant explaining P&A's role in the COBRA administration of the Plan.

(b) Within ninety (90) days after an employee of the Employer first becomes covered by the Plan, P&A shall send by first class mail a notice addressed to the employee and to any spouse of the employee who also is covered by the Plan informing them of their rights and responsibilities under the COBRA law (an "Initial COBRA Notice").

(c) P&A shall review any notice stating that a Qualifying Event for COBRA purposes has occurred with respect to coverage under the Plan. For purposes of this Agreement, the term "Qualifying Event" shall have the meaning ascribed to it by Section 2203 of the Public Health Services Act or any successor provision of law. If such notice is determined to have been timely provided and the occurrence of a Qualifying Event is confirmed, P&A shall provide the following services with respect to each of those individuals who has become entitled to COBRA continuation coverage as a result of that Qualifying Event (a "Qualified Beneficiary"):

(1) P&A shall mail to the attention of the Qualified Beneficiary a COBRA election package consisting of a notice notifying him or her that he or she has the right to elect to continue his or her Plan coverage on the terms described in the notice (a "COBRA Election Notice"); a form that may be used to elect continuation coverage; and any enrollment forms that must be completed to satisfy the requirements of any insurance company, Health Maintenance Organization or other entity that will provide elected COBRA coverage (a "Coverage Provider"). A third party administrator for a self-insured plan or benefit option shall be deemed the Coverage Provider with respect thereto, and the Employer shall be deemed the coverage Provider for a self-insured plan or benefit option that is self-administered by the Employer;

(2) If the Qualified Beneficiary elects COBRA continuation coverage by completing and returning the aforementioned election form and any applicable enrollment forms and timely pays his or her initial COBRA premium, P&A shall forward his or her enrollment form information to the Coverage Providers that will be providing the elected coverage;

(3) P&A shall send to the Qualified Beneficiary who has elected COBRA continuation coverage (a "COBRA Continuant"), a bill with respect to each month of the elected coverage, and shall send a second bill should the COBRA Continuant fail to timely pay the original bill by its stated due date. The billed amount shall be 102 percent of the "applicable premium" (150 percent with respect to coverage extended from 18 months to 29 months due to disability, unless a different percentage is mutually agreed upon by the parties) within the meaning of Section

2202(3) of the Public Health Services Act;

(4) Except as noted on Schedule A hereto, P&A shall forward 100% of the applicable premium to the Employer for payment to the Coverage Provider, accompanied by information that identifies the COBRA Continuant, the amount of his or her premium and the coverage period to which the premium payment relates. The amount by which a premium payment exceeds the applicable premium (typically, 2 percent of the applicable premium) shall be retained by P&A as additional compensation for its services hereunder;

(5) Should the COBRA Continuant fail to make any periodic premium payment by the end of the applicable grace period, P&A shall notify the Coverage Provider that the COBRA Continuant's coverage is to be canceled due to the non-payment of premiums;

(6) P&A shall receive and review any request by a COBRA Continuant to extend the period of his or her COBRA continuation coverage on account of a determination of disability by the Social Security Administration or the occurrence of a second Qualifying Event;

(7) If it determines that a COBRA Continuant's request to extend the period of his or her COBRA continuation coverage should be granted, P&A shall so notify the Coverage Providers who have been providing COBRA coverage;

(8) P&A shall notify the COBRA Continuant should a Coverage Provider modify his or her COBRA coverage in any material respect;

(9) P&A shall coordinate with the Employer regarding open enrollments occurring during the term of the COBRA Continuant's COBRA coverage and shall forward to the appropriate Coverage Provider information describing any change in coverage elected by the COBRA Continuant during open enrollment;

(10) Using information contained in its electronic file regarding the COBRA Continuant, P&A shall determine the date as of which his or her COBRA continuation coverage is due to cease;

(11) Should it determine that the COBRA continuation coverage of the COBRA Continuant is to be prematurely terminated due to the non-payment of premiums, the commencement of coverage under another group health plan or Medicare or other circumstances prescribed by the COBRA law, P&A shall notify him or her in writing to that effect;

(12) Prior to the termination of a COBRA Continuant's continuation coverage, P&A shall provide him or her with a notice describing any rights that he or she may have to obtain coverage under a "conversion health plan" within the meaning of Section 2202(5) of the Public Health Services Act;

(d) With respect to any individual who is a COBRA Continuant on the date this Agreement first becomes effective, P&A shall provide all of the services described in paragraphs "3" through "12" of subsection (c) above.

(e) If, after it reviews a notification that a Qualifying Event has occurred or that a disability determination has been received, P&A determines that there is no right to COBRA continuation coverage or to an extension of COBRA continuation coverage based on that notification, it shall provide written notice to the affected individuals that COBRA coverage is not available.

(f) P&A shall provide to the Employer and to Qualified Beneficiaries reasonable access to P&A employees who are familiar with the Plan through a toll-free telephone number and "Live Chat" texting during the regular business hours of P&A and voicemail for after-hours calls.

(g) Once per month, P&A shall provide to the Employer a summary of information pertaining to its administrative activities hereunder during the preceding month, including the names of each of the Plan's COBRA Continuant during that month, the premium amounts that each paid for coverage during that month and the types of coverage he or she received during that month.

### **3. *Employer Responsibilities; Warranties and Representations.***

(a) As soon as is practicable after this Agreement is signed, the Employer shall obtain from each insurance company, Health Maintenance Organization or other entity that is providing coverage under the Plan (a "Coverage Provider") authorization for P&A to communicate with it directly regarding the subject matter of this Agreement.

(b) The Employer shall notify P&A as soon as possible, but not later than thirty (30) days, following the occurrence of any of the following events:

(1) the commencement of coverage for any person under the Plan;

(2) the death of a covered employee;

(3) the termination (other than by reason of gross misconduct) or reduction of hours of a covered employee's employment;

(4) a covered employee becoming entitled to Medicare benefits under title XVIII of the Social Security Act;

(5) a proceeding regarding the Employer's bankruptcy under title 11 of the United States Code that affects the benefits of a retired employee or his spouse or dependents of the Employer;  
or

(6) in accordance with any change in a law or regulation requiring group health plan continuation coverage after the date of this Agreement, any other event the occurrence of which requires notification by an Employer to a plan administrator, but only after P&A advises the

**Employer of such change.**

Such notification shall be made by electronic transmission via P&A's web portal, fax or U.S. mail, using forms provided by P&A for this purpose.

(c) The Employer shall notify P&A as soon as possible, but not later than five (5) days after the Employer is notified by an employee, spouse or dependent of following the occurrence of any of the following events:

(1) The divorce of the employee from the employee's spouse (or their legal separation, but only if such event causes the spouse to lose his or her coverage under the terms of the Plan);  
or

(2) A dependent child ceasing to be a dependent child under the requirements of the Plan.

Such notification shall be made by electronic transmission, using forms provided by P&A for this purpose.

(d) The Employer shall review each monthly report generated by P&A pursuant to Section 2(i) and shall notify P&A within thirty (30) days after the report was sent or made available to the Employer of any errors or omissions in the report. A set of instructions that the Employer may use to verify the accuracy of P&A's monthly reports is available on request.

(e) The Employer shall promptly and accurately furnish to P&A such other information as P&A reasonably deems necessary or appropriate for the discharge of its responsibilities hereunder.

(f) Should P&A modify in any way the standard format of any of its written materials used in connection with the provision of its professional COBRA administration services, the Employer agrees to use exclusively the modified version of the materials as soon as P&A provides them to the Employer.

(g) Should the group health plans or coverage options listed on Schedule A include a health flexible spending account under a cafeteria plan in accordance with Internal Revenue Code Section 125 and the regulations (proposed or final) thereunder (a "health FSA") with respect to which P&A is not the claims administrator, the Employer (or an agent of the Employer other than P&A) shall be responsible for determining whether any person who has sustained a loss of coverage under that health FSA must be offered the opportunity to continue that coverage based on Income Tax Regulation Section 54.4980B-2, Q&A-8 (or any successor regulations or rules pertaining thereto) and, if so, for advising P&A of the applicable premium for same.

(h) Should any of the group health plans or coverage options listed on Schedule A include a "self-insured medical expense reimbursement plan" as defined in Internal Revenue Code Section 105(h) with respect to which P&A is not the claims administrator, (other than a health FSA that is part of a

cafeteria plan), the Employer (or an agent of the Employer other than P&A) shall be responsible for advising P&A of the applicable premium for continuation coverage under that self-insured medical expense reimbursement plan.

(i) Should the Employer become a party to any collective bargaining agreement containing any provision that refers to or impacts, either directly or indirectly, the manner in which COBRA is to be provided to any employee who is a member of the collective bargaining unit that is a party to the agreement or his or her spouse or dependents, the Employer shall provide P&A with a complete copy of the pertinent contract language not less than thirty (30) days before the effective date of that collective bargaining agreement.

(j) The Employer warrants and represents to P&A that the list of group health plans and of the coverage providers under each such plan is complete and accurate as of the date of this Agreement. Should the Employer, during the term of this Agreement, establish any new group health plan or add any coverage provider to any of its current group health plans, the Employer agrees to notify P&A in writing of same within seven (7) days thereafter. The Employer hereby acknowledges its understanding that P&A cannot assure the Employer's compliance with COBRA without having, at all times, complete and accurate information as to the group health plans and coverage options of the Employer.

#### **4. Compensation.**

(a) As compensation for the services rendered hereunder, the Employer agrees to pay P&A fees in accordance with the fee schedule set forth at Schedule B hereto. The fee schedule set forth at Schedule B hereto shall remain in effect for the initial three-year term of this Agreement. P&A shall notify the Employer in writing of any request to modify the fee schedule not less than ninety (90) days before the end of the initial three-year term.

(b) Should the Employer request in writing any services or materials that are in addition to the services described in Section 2, P&A shall be entitled to such additional compensation from the requesting party as is mutually agreed upon in writing by the requesting party and P&A.

**5. Limitation on P&A's Obligations.** P&A shall have no obligation under this Agreement or otherwise to verify the accuracy or completeness of any information furnished by the Employer to P&A. P&A shall not provide legal counsel or tax advice to the Employer, and any advice furnished by P&A to the Employer regarding any provision of any law providing for the continuation of group health coverage should not be relied upon by Employer prior to consulting with its own legal advisors. P&A shall not be responsible for any action or inaction regarding COBRA administration that occurred prior to the commencement of this Agreement, or that results from the Employer's failure to notify P&A on a timely basis regarding a qualifying event, or that occurs after the termination of the Agreement.

**6. Release and Indemnification.**

(a) P&A shall be liable for and shall protect, hold harmless and indemnify the Employer and its employees from and against all penalties, losses, damages, costs, expenses, attorney's fees and court costs suffered by the Employer or its employees resulting from a breach of this Agreement or from the negligence or other tortuous conduct of P&A, any of P&A's employees or any of P&A's subcontractors arising out of the performance of its duties under this Agreement.

(b) To the extent permitted by applicable Texas law, the Employer shall be liable for and shall protect and hold harmless P&A and its employees from and against all penalties, losses, damages, costs, expenses, attorney's fees and court costs suffered by P&A or its employees attributable to any breach by the Employer of its obligations, warranties or representations, including but not limited to incorrect and or incomplete information provided by the Employer or the unauthorized modification or misuse of forms provided to the Employer by P&A.

P&A and Employer agree that the provisions of this Section 6 shall survive the termination of this Agreement.

**7. Term and Termination.** The initial term of this Agreement shall be three years, commencing on the Effective Date. Thereafter, a renewal extension of up to three years may be made assuming satisfactory performance and terms and fees are mutually agreed upon in writing by both parties. Notwithstanding the foregoing, this Agreement shall terminate (a) automatically if either party is adjudicated a bankrupt or suffers appointment of a temporary or permanent receiver, trustee or custodian for all or a substantial part of their assets, which shall not be discharged within thirty (30) days of appointment, or makes an assignment for the benefit of creditors, or (b) after written notice by one party of the other party's material breach of, or material failure to perform, its obligations hereunder unless such breach or failure is cured within ten (10) days of said notice. Any notice of breach must provide details regarding the nature of the other party's alleged breach, the specific obligation hereunder to which the alleged material breach relates, the date on which occurred and the identity of any personnel of the other party that were involved. Failure to provide such detail shall render said notice null and void for purposes of this Agreement.

Notwithstanding the foregoing, either party may terminate this Agreement at any time upon 90 days prior written notice; provided, however, that a termination initiated by Employer shall not relieve Employer from paying any fees already incurred.

Upon any termination of this Agreement, the following fees shall apply:

(a) Should the Employer request that P&A provide it with any information regarding the services rendered under this Agreement that is not already available at P&A's web portal (e.g., the

addresses or election status of individuals who were COBRA Continuant on the date the Agreement terminated), the Employer shall pay a fee of \$500.00 to obtain such information.

**Note:** The Employer shall be allowed continued access to the HR Connect Web Portal after any termination of services hereunder for a period of sixty days. The information that shall continue to be accessible at that location at no cost to the Employer shall include the following reports: Benefits Paid Detail, Census, Insurance Premiums, COBRA Notice History and Premium Remittance.

(b) For each premium payment that P&A receives from a COBRA Continuant after the termination of the Agreement and forwards to another party for processing, the Employer shall pay P&A a fee of \$5.00.

(c) For each COBRA election form that P&A receives from a Qualified Beneficiary after the termination of the Agreement and forwards to another party for processing, the Employer shall pay P&A a fee of \$7.50.

#### **8. Public Information.**

P&A acknowledges that Employer is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, and that Employer may be required to post a copy of the fully-executed Agreement on Employer's website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

**9. HIPAA Compliance.** The parties hereto acknowledge that they have entered into a separate Business Associate Agreement of even date herewith (the Employer as agent for its group health plans), a copy of which is appended hereto as Exhibit 1, and agree that said Business Associate Agreement and all of the obligations and rights of the parties thereunder shall be incorporated herein by reference.

**10. Binding Effect; Assignment.** This Agreement shall inure to the benefit of and be binding upon the parties, their legal representatives, successors and assigns.

**11. Integration.** By their making of this Agreement, the parties hereto hereby acknowledge that this Agreement supersedes any previous understandings between them with respect to all matters contained herein and contains the entire understanding and agreement between them with respect to all matters contained herein and cannot be amended, modified or supplemented except by a subsequent written agreement entered into by both parties.

**12. Dispute Resolution.** The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 60, shall be used by Employer and P&A to attempt to resolve any claim for breach of contract made by P&A that cannot be resolved in the ordinary course of business. P&A shall submit written notice of a claim of breach to the Executive Vice Chancellor and Chief Financial Officer of Employer, who shall



examine P&A's claim and any counterclaim and negotiate with P&A in an effort to resolve the claim.

**13. Notice.** Any notice hereunder by a party shall be deemed to have been duly given three (3) business days after mailing, and, except as otherwise provided herein, shall be given by mailing in any post office or post office box maintained by the United States Postal Service, enclosed in a postage paid envelope, registered or certified mail, return receipt requested, addressed to the party to whom or which notice is intended to be given at such party's address as stated above or to such other address as each party shall specify in writing to the other.

**14. Governing Law.** This Agreement is made in and shall be construed pursuant to the laws of the State of Texas. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against Employer shall be in the county in which the primary office of the Chief Executive Officer of the Employer is located. At the time of the execution of this Agreement, such county is Brazos County, Texas.

**15. Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, the remainder of this Agreement will be enforced, with substitution as necessary to give reasonable overall effect to the terms of this Agreement.

**16. Business Relationship.** The parties agree that P&A is an independent contractor of Employer. This Agreement will not create any agency, employment, joint venture, partnership, representation, or an attorney-client or fiduciary relationship between the parties. No party has the authority to nor will a party attempt to, create any obligation on behalf of another party as a result of this Agreement.

**17. Child Support. Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, *Texas Family Code*, P&A certifies that the individual or business entity named in the Agreement is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**18. Debts or Delinquencies. Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, P&A agrees that any payments owing to P&A under this Agreement may be applied directly toward certain debts or delinquencies that P&A owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

**19. Franchise Tax Certification.** If P&A is a taxable entity subject to the Texas Franchise Tax

(Chapter 171, Texas Tax Code), then P&A certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that P&A is exempt from the payment of franchise (margin) taxes.

**20. Previous Employment.** P&A acknowledges and understands that Section 2252.901, Texas Government Code, prohibits Employer from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If P&A is an individual, by signing this Agreement, P&A certifies that Section 2252.901, Texas Government Code, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

**21. LIMITATIONS.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF EMPLOYER (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON EMPLOYER EXCEPT TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS.

**22. Insurance Requirements.** P&A shall obtain and maintain, for the duration of this Agreement, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company. By requiring such minimum insurance, the Employer shall not be deemed or construed to have assessed the risk that may be applicable to P&A under this Agreement. P&A shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. P&A is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

(a)	Workers' Compensation	Limit
	Statutory Benefits (Coverage A)	Statutory
	Employers Liability (Coverage B)	\$1,000,000 Each Accident

\$1,000,000 Disease/Employee  
\$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for Employer. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

(b) Commercial General Liability	Limit
Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Damage to rented Premises	\$ 300,000
Medical Payments	\$ 5,000

The required commercial general liability policy will be issued on a form that insures P&A's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

- (c) Umbrella/Excess Liability Insurance  
Limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000, and will be excess over and be no less broad than and "following form" of all included coverage described above. Inception and expiration dates will be the same as the underlying policies. Drop-down coverage will be provided for reduction and/or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.
- (d) Professional Liability (Errors & Omissions)  
Insurance with limits of not less than \$5,000,000 each occurrence, \$5,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of P&A and its subcontractors under this Agreement. Renewal policies written on a claim-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, P&A agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least two (2) years after the expiration of cancellation of this Agreement.
- (e) Vendor's Employee Dishonesty Insurance  
Limit of not less than \$2,000,000 per claim. P&A will be primary to any insurance carried by A&M System. Employee Dishonesty policy will name A&M System as Loss Payee.
- (f) Director's and Officers' Liability Insurance  
Limit of not less than \$1,000,000 per claim. The coverage will be continuous for the duration of this Agreement and for not less than two (2) years following the expiration or termination of this Agreement.
- (g) P&A will deliver to Employer:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form upon written request by Employer verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

- (h) All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System.

P&A is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following Employer contact:

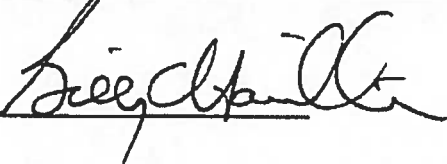
Henry Judah, Associate Director  
The Texas A&M University System  
301 Tarrow Street, 5<sup>th</sup> Floor  
College Station, Texas 77840

Fax: 979.458.6247  
Email: HJudah@tamus.edu

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed,

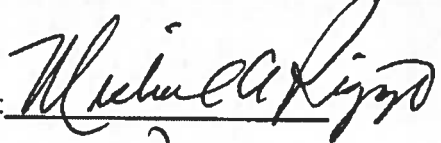
IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

THE TEXAS A&M UNIVERSITY SYSTEM

By: 

Title: Executive Vice Chancellor and CFO

P&A ADMINISTRATIVE SERVICES, INC.

By: 

Title: President

**SCHEDULE A**

**EMPLOYER'S GROUP HEALTH PLANS**

*Bluecross Blueshield of Texas-MEDICAL  
Delta Dental Insurance Company-DENTAL PPO*

***P&A shall remit premiums for COBRA under the following plans directly to the applicable Coverage Providers:***

*DeltaCare USA-DENTAL HMO  
EyeMed-VISION*

**SCHEDULE B  
FEES**

1. **INSTALLATION FEE. N/A**

2. **MONTHLY ADMINISTRATION FEES.** The Employer shall pay P&A administration fees with respect to each calendar month or portion of a calendar month during which P&A performs any of the services described herein.

During the second month of the Agreement, P&A shall begin to provide the Employer with invoices for services during the preceding month. The fees for a given month shall equal \$.41 for each individual enrolled in the Plan as of the first day of that month (including for purposes of this Agreement any COBRA Continuant and any former employee whose COBRA election period had not expired as of that date). Each such invoice shall be due and payable within thirty (30) days after receipt by the Employer.

3. **MAILING EXPENSES.** The Employer shall reimburse P&A for the cost of any mailing required under the Agreement the rate for which exceeds the first class rate charged by the U.S. Post Office after P&A provides the Employer with proof of same.

4. **PARTICIPANT FEES.** An individual who has coverage under the Plan shall pay to P&A a fee of \$25.00 should a check rendered by him or her in payment of a premium be returned on account of insufficient funds. Further, if an individual's COBRA coverage must be reinstated due to non-payment of premiums or other circumstances for which he or she is responsible, he or she shall pay P&A a reinstatement fee of \$30.00.

Note: Should changes in applicable federal or state law or regulations make it necessary or advisable for services other than those enumerated in this Agreement to be rendered in connection with the administration of the Plan (e.g., a new type of notice is required to be provided to certain covered persons) and should the Employer desire to retain P&A to provide such additional services, the addition of such services to P&A's responsibilities shall require an amendment to this Agreement. P&A reserves the right to request an adjustment in its fees hereunder under such circumstances.

**EXHIBIT 1**

**BUSINESS ASSOCIATE AGREEMENT**

## **DIRECT BILLING SERVICES AGREEMENT**

This Agreement made effective as of April 1, 2017, (the "Effective Date"), by and between **THE TEXAS A&M UNIVERSITY SYSTEM**, 301 Tarrow, 5th Floor, College Station, TX 77840 (the "Employer"), and **P&A ADMINISTRATIVE SERVICES, INC.**, 17 Court Street, Suite 500, Buffalo, NY 14202-3294 ("P&A").

### **WITNESSETH:**

**WHEREAS**, the Employer maintains several group health plans for the benefit of its eligible employees and retired employees, and

**WHEREAS**, the Employer desires to engage P&A to assist the Employer in the billing, collection, and remittance of premiums related to providing group health plan benefits to certain employees and retired employees of the Employer who are identified by the Employer as needing such services ("Participants"), and P&A desires to provide such services upon certain terms and conditions;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto, with the intention of being legally bound hereby, covenant and agree as follows:

#### **1. Direct Billing Services.**

Participants may include retired employees, survivors of employees or retired employees, or active employees enrolled as a fellow, on leave without pay, or 9-month employees needing to be billed for the summer months. P&A shall provide the following services with respect to each Participant of the Employer who has coverage under any group health plan or coverage option listed on Schedule A:

(a) P&A shall send correspondence to each Participant describing P&A's role in the administration of the Plan, billing and collection process, acceptable payment methods, and P&A customer contact information, and any other information requested by the Employer;

(b) With respect to each person who is a Participant on the Effective Date, P&A shall receive by electronic download from the Employer the information that P&A deems necessary to discharge its responsibilities under this Agreement, including but not limited to name, address, Unique ID Number, plan information, coverage information (including information for covered dependents where necessary) and costs, and shall enter that information into P&A's administrative software system to create an electronic file with respect to the Participant;

(c) With respect to each individual who becomes a Participant after the Effective Date, P&A shall receive from the Employer a weekly electronic billing enrollment file in a format mutually agreed to



by both parties;

(d) P&A shall forward to each Participant a monthly bill for the Participant's share of the cost of his or her insurance coverage for the ensuing month and shall send monthly late notices to any Participant who fails to timely remit to P&A the monies due under any such bill;

(e) P&A shall collect from Participants the monies billed for, and shall forward, on a monthly basis, all the monies collected directly to Employer and provide Employer with an electronic remittance file in a format agreed to by both parties, to support the monies remitted each month; and

(f) Should a Participant fail to make any premium payment for insurance coverage that he or she has been receiving by the deadline for same, P&A shall notify the Employer that the coverage is to be canceled due to the non-payment of premiums.

(g) P&A shall provide to the Employer and to Participants reasonable access to P&A employees who are familiar with the billing services being rendered by P&A through a toll-free telephone number and "Live Chat" texting during the regular business hours of P&A and voicemail for after-hours calls.

## **2. *Employer Responsibilities.***

(a) The Employer shall notify P&A as soon as possible, but not later than thirty (30) days, following the occurrence of any of the following events:

- (1) the commencement of coverage for any Participant; or
- (2) the death of a Participant or a loss of benefit eligibility for any other reason.

Such notification shall be made by the weekly electronic billing enrollment file sent by the Employer, or by phone if more immediate notification is deemed necessary.

(b) The Employer shall promptly and accurately furnish to P&A such information as P&A reasonably deems necessary or appropriate for the discharge of its responsibilities hereunder.

## **3. *Compensation.***

(a) As compensation for the services rendered hereunder, the Employer agrees to pay P&A any such fees as are described on the fee schedule set forth at Schedule B hereto. The fee schedule set forth at Schedule B hereto shall remain in effect for the initial three-year term of this Agreement. P&A shall notify the Employer in writing of any request to modify the fee schedule not less than ninety (90) days before the end of the initial three-year term.

(b) Should the Employer desire any services or materials that are in addition to the services described in Section 1, it shall request those services in writing. P&A shall be entitled to such additional compensation from the Employer for those additional services as is mutually agreed upon by the requesting party and P&A.

**4. Limitation on P&A's Obligations.** P&A shall have no obligation under this Agreement or otherwise to verify the accuracy or completeness of any information furnished by the Employer to P&A. P&A shall not provide legal counsel or tax advice to the Employer, and any advice furnished by P&A to the Employer regarding any provision of any law should not be relied upon by Employer prior to consulting with its own legal advisors. P&A shall not be responsible for any action or inaction regarding billing services that occurred prior to the commencement of this Agreement, or that results from the Employer's failure to notify P&A on a timely basis of information required for P&A to adequately perform billing services.

**5. Release and Indemnification.**

(a) P&A shall be liable for and shall protect, hold harmless and indemnify the Employer and its employees from and against all penalties, losses, damages, costs, expenses, attorney's fees and court costs suffered by the Employer or its employees resulting from a breach of this Agreement or from the negligence or other tortious conduct of P&A, any of P&A's employees or any of P&A's subcontractors arising out of the performance of its duties under this Agreement.

(b) To the extent permitted by applicable Texas law, the Employer shall be liable for and shall protect and hold harmless P&A and its employees from and against all penalties, losses, damages, costs, expenses, attorney's fees and court costs suffered by P&A or its employees attributable to any breach by the Employer of its obligations, warranties or representations, including but not limited to incorrect and or incomplete information provided by the Employer or the unauthorized modification or misuse of forms provided to the Employer by P&A.

P&A and Employer agree that the provisions of this Section 5 shall survive the termination of this Agreement.

**6. Term and Termination.** The initial term of this Agreement shall be three years, commencing on the Effective Date. Thereafter, a renewal extension of up to three years may be made assuming satisfactory performance and terms and fees are mutually agreed upon in writing by both parties. Notwithstanding the foregoing, this Agreement shall terminate (a) automatically if either party is adjudicated a bankrupt or suffers appointment of a temporary or permanent receiver, trustee or custodian for all or a substantial part of their assets, which shall not be discharged within thirty (30) days of appointment, or makes an assignment for the benefit of creditors, or (b) after written notice by one party of the other party's material breach of, or material failure to perform, its obligations hereunder unless such breach or failure is cured within ten (10) days of said notice. Any notice of breach must provide details regarding the nature of the other party's alleged breach, the specific obligation hereunder to which the alleged material breach relates, the date on which occurred and the identity of any personnel

of the other party that were involved. Failure to provide such detail shall render said notice null and void for purposes of this Agreement.

**Confidentiality.**

All books and records, including the data therein, pertaining to each party and the Participants which may come into the hands of the other are to be treated as confidential and private records, and the other party shall not disclose information from such records unless it is required by law or authorized by the initial party in writing prior to such disclosure. P&A acknowledges that Employer is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, and that Employer may be required to post a copy of the fully-executed Agreement on Employer's website in compliance with Section 2261.253(a)(1), *Texas Government Code*. Both parties reserve the right to control the use of any of their symbols, trademarks, computer programs and service marks currently existing or hereafter established. Both parties agree that they will not use the computer programs, work, symbols, trademarks, service marks, or other devices of the other in advertising, promotional material, or otherwise and will not advertise or display such devices without the prior written consent of the other party. In addition, both parties further agree that any such work, symbols, trademarks, service marks, or other devices furnished by one party to the other shall remain the property of the initial party and shall be returned by the other party upon demand of the initial party upon termination of this Agreement.

8. **HIPAA Compliance.** The parties hereto acknowledge that they have entered into a separate Business Associate Agreement of even date herewith, a copy of which is appended hereto as Exhibit 1, and agree that said Business Associate Agreement and all of the obligations and rights of the parties thereunder shall be incorporated herein by reference.

9. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties, their legal representatives, successors and assigns.

10. **Integration.** By their making of this Agreement, the parties hereto hereby acknowledge that this Agreement supersedes any previous understandings between them with respect to all matters contained herein and contains the entire understanding and agreement between them with respect to all matters contained herein and cannot be amended, modified or supplemented except by a subsequent written agreement entered into by both parties.

11. **Dispute Resolution.** The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Employer and P&A to attempt to resolve any claim for breach of contract made by P&A that cannot be resolved in the ordinary course of business. P&A shall submit written notice of a

claim of breach to the Executive Vice Chancellor and Chief Financial Officer of Employer, who shall examine P&A's claim and any counterclaim and negotiate with P&A in an effort to resolve the claim.

2. **Notice.** Any notice hereunder by a party shall be deemed to have been duly given three (3) business days after mailing, and, except as otherwise provided herein, shall be given by mailing in any post office or post office box maintained by the United States Postal Service, enclosed in a postage paid envelope, registered or certified mail, return receipt requested, addressed to the party to whom or which notice is intended to be given at such party's address as stated above or to such other address as each party shall specify in writing to the other.

13. **Governing Law.** This Agreement is made in and shall be construed pursuant to the laws of the State of Texas.

14. **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, the remainder of this Agreement will be enforced, with substitution as necessary to give reasonable overall effect to the terms of this Agreement.

15. **Business Relationship.** The parties agree that P&A is an independent contractor of Employer. This Agreement will not create any agency, employment, joint venture, partnership, representation, or an attorney-client or fiduciary relationship between the parties. No party has the authority to nor will a party attempt to, create any obligation on behalf of another party as a result of this Agreement.

16. **Child Support. Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, *Texas Family Code*, P&A certifies that the individual or business entity named in the Agreement is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

17. **Debts or Delinquencies. Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, P&A agrees that any payments owing to P&A under this Agreement may be applied directly toward certain debts or delinquencies that P&A owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

18. **Franchise Tax Certification.** If P&A is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then P&A certifies that it is not currently delinquent in the payment of

any franchise (margin) taxes or that P&A is exempt from the payment of franchise (margin) taxes.

**19. Previous Employment.** P&A acknowledges and understands that Section 2252.901, Texas Government Code, prohibits Employer from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If P&A is an individual, by signing this Agreement, P&A certifies that Section 2252.901, Texas Government Code, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

**20. LIMITATIONS.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF EMPLOYER (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON EMPLOYER EXCEPT TO THE EXTENT AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS.

**21. Insurance Requirements.** P&A shall obtain and maintain, for the duration of this Agreement, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company. By requiring such minimum insurance, the Employer shall not be deemed or construed to have assessed the risk that may be applicable to P&A under this Agreement. P&A shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. P&A is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

(a) Workers' Compensation	Limit
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident
	\$1,000,000 Disease/Employee
	\$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for Employer. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

(b) Commercial General Liability	Limit
Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$1,000,000
Personal/Advertising Injury	\$1,000,000
Damage to rented Premises	\$ 300,000
Medical Payments	\$ 5,000

The required commercial general liability policy will be issued on a form that insures P&A's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

(c) Umbrella/Excess Liability Insurance

Limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000, and will be excess over and be no less broad than and "following form" of all included coverage described above. Inception and expiration dates will be the same as the underlying policies. Drop-down coverage will be provided for reduction and/or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.

(d) Professional Liability (Errors & Omissions)

Insurance with limits of not less than \$5,000,000 each occurrence, \$5,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of P&A and its subcontractors under this Agreement. Renewal policies written on a claim-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, P&A agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least two (2) years after the expiration of cancellation of this Agreement.

(e) Vendor's Employee Dishonesty Insurance

Limit of not less than \$5,000,000 per claim. P&A will be primary to any insurance carried by A&M System. Employee Dishonesty policy will name A&M System as Loss Payee.

(f) Director's and Officers' Liability Insurance

Limit of not less than \$1,000,000 per claim. The coverage will be continuous for the duration of this Agreement and for not less than two (2) years following the expiration or termination of this Agreement.

(g) P&A will deliver to Employer:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form upon written request by Employer verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

- (h) **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System.

P&A is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following Employer contact:

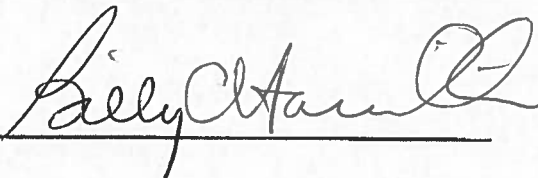
Henry Judah, Associate Director  
The Texas A&M University System  
301 Tarrow Street, 5<sup>th</sup> Floor  
College Station, Texas 77840

Fax: 979.458.6247  
Email: HJudah@tamus.edu

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed,

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

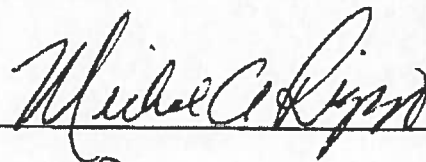
THE TEXAS A&M UNIVERSITY SYSTEM

By: 

Title: Executive Vice Chancellor and CFO

Date: 3-1-17

P&A ADMINISTRATIVE SERVICES, INC.

By: 

Title: Pres.

Date: 3/1/17

**SCHEDULE A**

**EMPLOYER'S GROUP HEALTH PLANS**

*BlueCross BlueShield Of Texas-MEDICAL  
Academic Health Plans - Medical  
Delta Dental Insurance Company-DENTAL PPO  
DeltaCare USA-DENTAL HMO  
EyeMed-VISION  
Securian Financial Group – Life Insurance  
Securian Financial Group - Accidental Death and Dismemberment  
CIGNA – Long Term Disability  
PayFlex – Flexible Healthcare Spending Account*



**SCHEDULE B  
FEES**

1. **INSTALLATION FEE.** N/A

2. **MONTHLY FEES.** The Employer shall pay P&A administration fees with respect to each calendar month or portion of a calendar month during which P&A performs any of the services described herein.

During the second month of the Agreement, P&A shall begin to provide the Employer with invoices for services it provided during the preceding month. The fees for a given month shall equal \$3.35 for each person who was a Billed Participant as of the first day of that month. Each such invoice shall be due and payable within thirty (30) days after receipt by the Employer.

3. **MAILING EXPENSES.** The Employer shall pay the cost of any mailing required under the Agreement the rate for which exceeds the first class rate charged by the U.S. Post Office.

4. **PARTICIPANT FEES.** P&A reserves the right to impose a charge of \$25.00 on a Participant should a check tendered by him or her in payment of a premium be returned on account of insufficient funds. Further, if insurance coverage must be reinstated due to non-payment of premiums or other circumstances for which a Participant is responsible, P&A may impose a charge of \$30.00 on that Participant.

**EXHIBIT 1**  
**BUSINESS ASSOCIATE AGREEMENT**