

## Service Agreement

This Service Agreement ("Agreement") is made this 11th day of May, 2015 by and among Paychex Benefit Technologies, Inc. dba BeneTrac, (PBT), Barney & Barney (Consultant) and City of Chula Vista (Client). PBT, Consultant and Client are sometimes hereinafter referred to individually as "party" and collectively as "parties".

### RECITALS

- A. PBT has developed and owns a proprietary service commonly known as the BeneTrac Service, which is an Internet deployed electronic enrollment and administrative system for group employee benefits ("BeneTrac Service").
- B. Client desires to utilize the BeneTrac Service for its group employee benefits enrollment and administration.
- C. Consultant is a broker providing employee benefits enrollment and administrative services to Client.
- D. Consultant agrees to distribute, PBT agrees to implement and administer and the Client agrees to use the BeneTrac Service on the terms and conditions set forth in this Agreement.

### OPERATIVE PROVISIONS

#### 1. Incorporation of Recitals

The Recitals are incorporated by this reference as though fully set forth herein.

#### 2. BeneTrac Service

The BeneTrac Service is deployed via the Internet and is categorized as an electronic enrollment and administration system for group employee benefits. The following features constitute the BeneTrac Service in accordance with the employee benefit plans as provided by Client or authorized representative: (a) Employee, spouse and dependent demographic information, as provided by such persons or the Client authorized representative; (b) Employee eligibility tracking; (c) Secure employee access for self service; (d) Open enrollment transactions; (e) New hire enrollment transactions; (f) Life event enrollment transactions; (g) Online benefit descriptions; (h) Monthly enrollment transaction comparison of insurance carrier list bills with PBT's database of online enrollments; (i) If requested by Client or Consultant, PBT will provide data to third-party administrators such as: (1) Payroll Services; (2) Human Resource Information Systems; (3) COBRA Administrators; and (4) Consolidated billing record-keepers. For integration of existing data feeds, we provide specifications for input and output and up to 8 hours of technical support. Additional support will be billed at \$150.00 per hour; (j) Custom reports including comprehensive data extracts; and (k) Attempt to establish electronic transmission of enrollment transactions to the Client's insurance carriers or service providers. For purposes of Section 2(k), PBT will make reasonable efforts to provide a file feed to any insurance carrier or service provider that agrees to receive one and supports a re-usable file format. PBT shall bear no financial responsibility for any insurance carrier or service provider that is unable to establish or maintain a reliable and re-usable data exchange process. PBT will seek Consultant's assistance to encourage insurance carriers or service providers to engage in re-usable data exchange process if not available.

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### 3. PBT Responsibilities

PBT shall have the following responsibilities in connection with the BeneTrac Service: (a) Initial population and Plan setup; (b) Reconciliation of initial demographic and enrollment data; (c) Delivery of eligibility and enrollment data to the Client's insurance carriers and service providers as authorized by the Parties, in accordance with the capabilities and approval of the Client's carriers and/or service providers. PBT shall inform Client if a data transmission to one of the above mentioned providers in 3(c) is terminated due to the discovery of an unreliable data exchange process; (d) Teleconference training of primary users of the BeneTrac Service; (e) Maintenance of an on-line Help system; (f) Monthly comparison of PBT's database of online enrollment transactions with the insurance carriers' list bills. Identified discrepancies will be communicated promptly to Client and/or Consultant for informational purposes only. Resolution of any discrepancies is the sole responsibility of Client and/or Consultant; (g) Compliance with PBT's Data Privacy Policy (Exhibit A); and (h) Maintaining continuous access to the BeneTrac Service as defined in Section 16 of this document.

CLIENT AND CONSULTANT UNDERSTAND AND ACKNOWLEDGE THAT PBT IS NOT AN ADMINISTRATOR OF CLIENT'S PLAN UNDER THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985 ("COBRA"). CLIENT AND/OR CONSULTANT ACKNOWLEDGE(S) THAT THE BENETRAC SERVICE AND THE PERFORMANCE OF THE BENETRAC SERVICES BY PBT DOES NOT AND IS NOT INTENDED TO MAKE PBT THE "PLAN ADMINISTRATOR", "PLAN SPONSOR" OR OTHER "FIDUCIARY" UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT ("ERISA") OF 1974, AS AMENDED, OR OTHERWISE OF ANY PLAN, AND CLIENT SHALL NOT IDENTIFY OR REFER TO PBT OR ANY OF ITS AFFILIATES AS SUCH. PBT HAS NO DISCRETIONARY AUTHORITY OR DISCRETIONARY RESPONSIBILITIES IN THE ADMINISTRATION OF CLIENT'S COBRA PLANS.

PBT does not own any data, information or material that Client/Consultant submits to Benetrac in the course of using the Benetrac Service. As such, PBT shall not have any obligation to verify or determine the accuracy, validity or completeness of information provided by Client or Client's plan administrator, including the hire and termination date of any of Client's employees, and shall not be responsible for errors, delays or additional costs resulting from the receipt of inaccurate, invalid, incomplete or untimely information or information provided in an unacceptable format or media.

PBT is not required, under the terms of this Agreement, to review Client's actions or those of Client's plan administrator(s). Furthermore, PBT will not incur any liability by taking or permitting any actions on the basis of any of Client's actions or those of Client's plan administrator(s) or for carrying out Client's directions or that of Client's plan administrator.

### 4. Client's Responsibilities

a. Client's designated users shall use the system in accordance with the following guidelines: (a) Provide PBT with initial data in accordance with PBT's standard data import requirements, including all employee and dependent demographic data and current enrollment elections. *If data is not submitted in electronic format, copies of employees' paper enrollment forms will be accepted; however, there is a nominal fee of \$1 per enrollment per line of coverage to cover the administrative costs of manual data entry;* (b) Provide all information necessary to assist in initial Client setup in accordance with the PBT implementation schedule; (c) Assign a trained

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user(s) to perform administrative enrollment tasks and to resolve all data discrepancies after training to facilitate electronic data integration; (d) Approve all data changes prior to the next regularly scheduled data transmission; (e) Upon confirmation of an electronic connection, make all enrollment and demographic changes through the BeneTrac Service only, unless otherwise instructed; (f) Upon implementation of an Employee Benefit Plan using alternate (non-electronic) methods of submitting enrollments, Client is responsible for updating PBT with all enrollment and demographic changes, unless changes will be made by PBT, in accordance with a prior written agreement between PBT and Client, detailing such arrangements; (g) Ensure confidentiality of Employer I.D., User Names and Passwords; (h) Use only PC or Mac based hardware and Microsoft operating systems; and (i) Verify that all eligibility restrictions, effective date and premium calculations, and all other specific plan rules are in place and working correctly after initial implementation, and after any Client directed changes.

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b. Client must provide PBT with copies of all of Client's carrier list bills for a minimum of ninety (90) days after each electronic feed is established and again for 90 days after each connected carrier renewal.


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c. Client (or Consultant, if so authorized,) is responsible for all activity occurring on Client's website and shall abide by all applicable local, state, national and foreign laws and regulations in connection with Client's use of the Benetrac Service, including, without limitation, those related to COBRA, the Internal Revenue Code of 1986, as amended, ERISA, data privacy, international communications and the transmission of technical or personal data. Client and/or Consultant shall notify PBT promptly of any unauthorized use of any password or user name or any other known or suspected breach of security.


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##### 5. Consultant's Responsibilities

As the Distributor of the BeneTrac Service to the Client, Consultant's responsibilities include: (a) Arrange for payment of a non-refundable implementation fee as described in the Fee Schedule Addendum; (b) Provide all information necessary to assist in initial Client setup in accordance with the PBT implementation schedule; (c) Provide detailed plan descriptions to PBT for posting on Client's website; (d) Arrange alternate funding, when applicable, from carriers or other sources for Client's use of the BeneTrac Service; (e) Assist PBT and Client to encourage insurance carriers and/or service providers to send and receive electronic eligibility data; (f) Never misrepresent the BeneTrac Service or its features, nor provide any warranties or guarantees beyond PBT's warranties or guarantees; and (g) Adopt PBT Data Privacy Policy or one comparable in scope (Exhibit A). If Consultant is acting as Administrator for Client, Consultant to verify that all eligibility restrictions, effective date and premium calculations, and all other specific plan rules are in place and working correctly after initial implementation, and after any Client or Consultant directed changes.

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**6. Term and Termination**

a. Term. The Term of this agreement shall commence when Client's Primary User(s) have been trained and the BeneTrac Service has been made available for use by Client/Consultant and remain in effect one year therefrom. In the event that a carrier is paying all or a portion of the cost of the BeneTrac service on behalf of Client, the term shall remain in effect until the carrier's next renewal date. The Term is automatically renewable unless **Client opts not to renew** or PBT elects to make changes to the conditions of use. If PBT elects to make such changes, including but not limited to rate changes, PBT will provide written notice to Client no less than forty five (45) days before the end of the Term. Any changes and/or additions to funding shall be provided to PBT in writing within ten (10) days of such change. In the event that a carrier ceases funding, Client has the option to continue the service and provide new funding instructions to PBT or terminate the BeneTrac service immediately.

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b. Automatic Termination. This Agreement will automatically terminate and all rights to the BeneTrac Service shall be automatically revoked upon any parties' (i) filing of a petition for bankruptcy protection and/or an adjudication of bankruptcy under any bankruptcy or insolvency law; (ii) commission of a receiver for its business or property, (iii) the making of any general assignment for the benefit of creditors, or (iv) a change to the Consultant.

c. Effect of a Consultant Change. Upon a change to the Client's Consultant, a new Service Agreement shall be executed by the parties under the then current pricing schedule for the new Consultant. The new Consultant shall submit a \$250 transfer fee to PBT within ten (10) days of the change, together with the new Service Agreement executed by the parties. If the former Consultant was responsible for funding the monthly BeneTrac Service Fees on behalf of Client, the Client or new Consultant shall submit the current month's Service Fee to PBT in order to continue uninterrupted service to Client. PBT reserves the right to temporarily suspend Client's access to the BeneTrac Service until the conditions set forth in this Section 6(c) are met. If the conditions are satisfied within twenty (20) days from the date of suspension of Client's access, PBT shall not assess additional fees. If the Consultant change is accompanied by any billable event, as outlined in the Fee Schedule Addendum, applicable fees will apply. No refund of PBT fees will be made for any period the Client was denied access to the BeneTrac Service as a result of a failure by the new Consultant or Client to comply with this Section 6(c). If thirty-one (31) or more days have transpired prior to meeting the conditions set forth above, Client's data will be purged from the PBT system and any subsequent re-instatement will be subject to Implementation Fees as generally required by a new Client.

d. Termination for Cause. Except as otherwise set forth herein, this Agreement may be terminated by any party upon thirty (30) days written notice for the material breach of this Agreement by any other party, which breach has remained uncured for a period of thirty (30) days from the date of written notice thereof, provided that if the material breach cannot reasonably be cured within thirty (30) days, the breaching party must commence to cure within the thirty (30) day period and diligently prosecute the cure until the breach is cured. Upon an alleged material breach, the aggrieved party shall provide written notice to all parties of the alleged material breach.

e. Nonpayment or Delinquent Payment of Fees. Any invoice delinquent in excess of forty-five (45) days shall be subject to a late fee of one and a half percent (1.5%) per annum and may be cause for termination of service. PBT shall notify Client at least five (5) business days before any termination action is taken.

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f. Termination by Any Party. Notwithstanding any other provision of this Agreement, this Agreement may be terminated by any party without cause upon sixty (60) days prior written notice to the other parties, provided however, that in the event Client terminates this Agreement prior to expiration of the initial 12 month term, Client shall pay to BeneTrac an amount equal to the fees that would have been due for the remaining portion of such initial 12 month term. After the initial 12 month term, should this Agreement be terminated by Client under this paragraph f, then Client shall be required pay any invoices through the termination effective date.

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g. Effect of Expiration or Termination. Upon the expiration or termination of this Agreement for any reason, all rights granted hereunder shall immediately terminate and any fees due to PBT shall be immediately due and payable. Client and/or Consultant shall promptly (i) remove all the BeneTrac Service components from the Client's web site, (ii) at PBT's discretion, remove any references to PBT marks, and (iii) return to PBT any materials and/or documents, regardless of form, provided by PBT to Client pursuant to this Agreement.

#### 7. Data Authorizations

Enrollment data will be shared when applicable with the Consultant, insurance carriers and third party administrators as authorized by the Client.

#### 8. Rate Guarantee

This Agreement must be signed by all parties and returned to PBT within forty-five (45) days of the date on page one in order to lock in the current quoted rates. After forty-five (45) days, if PBT has made any changes to pricing, the new terms will apply. Monthly fees may be adjusted upon annual renewal of this Agreement.

#### 9. Confidentiality

a. Confidential Information. Each party (the "Disclosing Party") may from time to time during the Term of this Agreement disclose to the other party(ies) (the "Receiving Party(ies)") certain non-public information regarding the Disclosing Party's business, including technical, marketing, financial, personnel, planning, and other information (the "Confidential Information"). The Disclosing Party shall mark all such Confidential Information in tangible form with the legend 'confidential', 'proprietary', or with similar legend. With respect to Confidential Information disclosed orally, the Disclosing Party shall describe such Confidential Information as such at the time of disclosure. The parties shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and its implementing regulation, the Standards for Privacy of Individually Identifiable Health Information (45 C.F.R., part 160 and part 164, subparts A and E), future amendments to the implementing Regulation, (hereinafter the HIPAA Privacy Rule), and the electronic data interchange requirements of HIPAA and the regulations issued thereunder (45 C.F.R. parts 160 and 162).

b. Protection of Confidential Information. Except as expressly permitted by this Agreement, the Receiving Party(ies) shall not disclose the Confidential Information of the Disclosing Party and shall use the same degree of care that the Receiving Party(ies) ordinarily uses to protect its/their own proprietary information, but in no event with less than reasonable care. The Receiving Party(ies) shall not use the Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and shall limit the disclosure of the Confidential Information of the Disclosing Party to the employees or agents of the Receiving Party(ies) who have a need to know such Confidential Information for purposes of this Agreement, and with

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respect to agents who are recipients of the Confidential Information of the Disclosing Party, who are bound in writing by confidentiality terms no less restrictive than those contained herein. The Receiving Party(ies) shall provide copies of such written agreements to the Disclosing Party upon request; provided, however, that such agreement copies shall themselves be deemed the Confidential Information of the Receiving Party(ies).

c. Exceptions. Notwithstanding anything contained herein to the contrary, Confidential Information shall not be deemed to include any information that: (a) was already lawfully known to the Receiving Party(ies) at the time of disclosure by the Disclosing Party as reflected in the written records of the Receiving Party(ies); (b) was or has been disclosed by the Disclosing Party to a third party without obligation of confidence; (c) was or becomes lawfully known to the general public without breach of this Agreement; (d) is independently developed by the Receiving Party(ies) without access to, or use of, the Confidential Information; (e) is approved in writing by the Disclosing Party for disclosure by the Receiving Party(ies); (f) is required to be disclosed in order for the Receiving Party(ies) to enforce its/their rights under this Agreement; or (g) is required to be disclosed by law or by the order of a court or similar judicial or administrative body, including as part of any filing with the Securities Exchange Commission; provided, however, that the Receiving Party(ies) shall notify the Disclosing Party of such requirement promptly and in writing, and shall cooperate reasonably with the Disclosing Party, at the Disclosing Party's expense, in obtaining of a protective or similar order with respect thereto.

d. Return of Confidential Information. The Receiving Party(ies) shall return to the Disclosing Party, destroy or erase all Confidential Information of the Disclosing Party in tangible form: (a) upon the written request of the Disclosing Party; or (b) upon the expiration or termination of this Agreement, whichever comes first, and in both cases, the Receiving Party(ies) shall, upon request of the Disclosing Party, certify promptly and in writing that it/they has/have done so.

e. Enrollment Data and History. In the event that PBT ceases doing business, Client is entitled to all enrollment data and history collected by PBT under this Agreement. **PBT will provide Client with access to their data history via the reporting tool within their BeneTrac site prior to the date of termination.**

#### 10. Warranties

Each Party represents and warrants to the other that: (i) It has full power and legal right to execute and deliver this Agreement and to perform its obligations under this Agreement; (ii) The execution, delivery and performance of this Agreement have been authorized by all required action(s), corporate or otherwise, and do not violate or conflict with any provisions of its charter, bylaws or other organizational documents, or any of its contractual obligations or requirements of law binding on it; (iii) This Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms and conditions; and (iv) it has, and shall maintain in full force and effect throughout the term of this Agreement, all governmental permits, licenses and authorizations required on its part to perform its obligations under this Agreement. EACH PARTY UNDERSTANDS AND AGREES THAT ALL INFORMATION, TECHNOLOGY AND SERVICES ARE PROVIDED AS-IS AND, EXCEPT AS SPECIFICALLY SET FORTH HEREIN AND IN THE SCHEDULES ATTACHED HERETO, EACH PARTY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Each party acknowledges that it has not entered into this Agreement in reliance upon any warranty or representation except those specifically set forth herein and in the Schedules hereto. PBT makes no representation or warranty that the BeneTrac

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Service is free from any infringement of any patent or proprietary rights of others, except that PBT is not aware, as of the PBT signature date of any claim or charge of any such infringement.

11. Information and Data.

1. PBT shall comply with all applicable local, state, and federal laws related to data confidentiality, security, loss, and breach, including but not limited to: Health Insurance Privacy and Portability Act (HIPPA); Health Information Technology for Economic and Clinical Health Act (HITECH); The Fair Credit Reporting Act (FCRA); and Children's Online Privacy Protection Act (COPPA).
2. PBT will have in place and will maintain at all times the Information Standards (and PBT warrants it has such Information Standards) which are consistent with relevant industry standards for the protection of data and information (including personal information) and which deal comprehensively with:
  - a. The protection of the confidentiality, integrity and security of all and any data or information (including personal information) supplied to the PBT by Client or Consultant;
  - b. The audit and accounting procedures in place to deal with the requirements of this section;
  - c. The reliability and training of staff to ensure awareness of (and compliance with) their obligations under this section; and
  - d. Any other measures and procedures to ensure that the PBT's obligations under this section are met.
3. PBT shall take all reasonable precautions to preserve the integrity and prevent any breach, corruption, loss, damage, or destruction of data and information (including personal information) provided by Client or Consultant.
4. PBT, including its agents, partners, and subcontractors, shall notify Client and Consultant once it becomes aware of any data security breach to Client or Consultant's information. PBT shall take immediate action to stop and remedy any data security breach. In addition, PBT shall, at PBT's expense, also aid in any required notices or remedial measures required by any applicable law as a result of any data breach sustained by PBT, including their partners, agents, and subcontractors.
5. Personal Information means information provided to PBT by or at the direction of Client, or to which access was provided to PBT by or at the direction of Client, in the course of PBT's performance under this Agreement that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers).

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6. Data Breach means (i) any act or omission that compromises either the security, confidentiality or integrity of Personal Information or the physical, technical, administrative or organizational safeguards put in place by PBT that relate to the protection of the security, confidentiality or integrity of Personal Information, or (ii) receipt of a complaint in relation to the privacy practices of PBT or a breach or alleged breach of this Agreement relating to such privacy practices.

## **12. Limitation of Liability**

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR OTHERWISE AND EXCEPTING HEREFROM DAMAGES INCURRED BY PBT ARISING OUT OF THE INFRINGEMENT OF PBT'S INTELLECTUAL PROPERTY, NO PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR FOR ANY MATTERS BEYOND ITS REASONABLE CONTROL (HOWEVER ARISING, INCLUDING NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES AGAINST PBT ARISING OUT OF OR IN CONNECTION WITH THE LOSS OF DATA, THE PERFORMANCE OF PBT'S PROPERTY AND/OR TECHNOLOGY OR ANY OTHER MATTERS RELATED TO THE BENETRAC SERVICE, THE CLIENT'S SITE OR ANY OTHER PRODUCTS OR SERVICES PROVIDED BY PBT PURSUANT TO THIS AGREEMENT. IN ANY EVENT, NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY IN AN AMOUNT GREATER THAN THE AMOUNTS ACTUALLY PAID BY CLIENT AND/OR CONSULTANT TO PBT FOR SERVICES RENDERED FOR THE THEN PREVIOUS FOUR (4) MONTHS HEREUNDER.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIMITATION OF LIABILITY SET FORTH IN THIS SECTION 12 DOES NOT APPLY TO (i) DAMAGES SUFFERED BY A PARTY AS A RESULT OF THE OTHER PARTY'S BREACH OF SECTION 9 ABOVE OR ANY OTHER INFRINGEMENT OF PBT'S INTELLECTUAL PROPERTY; AND (ii) ANY LIABILITY OF PBT FOR INDEMNIFICATION PURSUANT TO SECTION 13.d. HEREOF. PBT AGREES TO MAINTAIN CYBER LIABILITY INSURANCE COVERAGE.

## **13. Indemnity**

- a. Subject to the limitations of Section 12 hereof, PBT shall, at its own expense, defend or settle any claim, action or allegation brought against the other party(ies), and its employees, officers, directors, contractors or agents (the Indemnified Party(ies)) to the extent it is based on a claim that Indemnified Party's use of the BeneTrac Service in accordance with the terms of this Agreement infringes or violates any United States patent, copyright, trademark or trade secret of any third party or failure to comply with any law and attendant regulations (including HIPPA, GLBA, HITECH, FCRA, and COPPA). This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence or sole willful misconduct of Client and Consultant, their elected or appointed officials, officers, employees, agents, contractors and volunteers, and PBT shall pay any final judgments awarded or settlements entered into; provided that the Indemnified Party provides PBT with (i) prompt written notice of

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such claim or action, (ii) sole control and authority over the defense or settlement of such claim or action and (iii) information and reasonable assistance, at the Indemnified Party's expense, to defend and/or settle any such claim or action. The foregoing obligation does not apply to PBT with respect to the BeneTrac Service or portions or components thereof or services (i) not supplied by PBT (e.g. third party software, services, telecommunications or technology); or (ii) that are combined with other products, processes or materials not supplied by PBT where the alleged infringement relates to such combination. PBT shall also not have any obligation with respect to further damages arising from Client's and/or Consultant's continued use of infringing intellectual property after PBT has provided and implemented modifications to the BeneTrac Service, as applicable, that do not continue to infringe upon or misappropriate the third party's claimed rights, and PBT has notified Client and Consultant in writing that the purpose of the modification is to avoid further infringement or misappropriation.

***THIS SECTION 13(a) STATES PBT'S SOLE OBLIGATION AND THE INDEMNIFIED PARTY'S EXCLUSIVE REMEDY WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS BY THE BENETREC SERVICE OR ANY PART OR COMPONENT THEREOF.***

b. Subject to the limitations of Section 12 hereof, Client and Consultant agree to defend, indemnify and hold harmless PBT, its affiliates and their directors, officers, employees, legal representatives, agents, successors, and assigns from and against all claims, losses, liabilities, damages, demands, lawsuits, causes of action, costs and expenses (including reasonable attorneys' fees and costs) (collectively "Losses") as a result of Client's or Consultant's failure to comply with the requirements under COBRA.

c. Subject to the limitations of Section 12 hereof, PBT agrees to defend, protect, indemnify and hold Client and Consultant and their employees, officers, directors, contractors, agents, elected or appointed officials and volunteers (the Indemnified Party(ies)), harmless from and against all losses, damages, expenses, including reasonable attorney's fees, claims, demands, causes of action, costs, liability, injury, in law or equity, to property or persons, including wrongful death in any manner arising from, arising out of or incident to (a) PBT's alleged acts, omissions, negligence, or willful misconduct of PBT, its officials, officers, employees, agents and contractors (b) any breach of any covenant or agreement to be performed by PBT under this Agreement, provided that Client and/or Consultant provide PBT with (i) prompt written notice of such claim or action, (ii) sole control and authority over the defense or settlement of such claim or action and (iii) proper and full information and reasonable assistance to defend and/or settle any such claim or action.

d. PBT shall indemnify and defend Client or Consultant, including their elected or appointed officials, employees, agents, subcontractors, and volunteers, and hold them harmless from and against all losses, damages, expenses, including reasonable attorney's fees, claims, demands, causes of action, costs, liability, injury, resulting from any third party legal proceeding caused by PBT's data security breach or data loss, provided that Client and/or Consultant provide PBT with (i) prompt written notice of such claim or action, (ii) sole control and authority over the defense or settlement of such claim or action and (iii) proper and full information and reasonable assistance to defend and/or settle any such claim or action.

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e. Costs of Defense and Award. Included in the indemnity obligation set forth above, is the PBT's obligation to defend, at BPT's own cost, expense and risk, any and all suits, actions or other legal proceedings, that may be brought or instituted against Client and Consultant, their elected or appointed officials, officers, employees, agents and/or volunteers. PBT shall pay and satisfy any judgment, award or decree that may be rendered against Client and Consultant, their elected or appointed officials, officers, , employees, agents, contractors and/or volunteers, for any and all related legal expenses and costs incurred by each of them.

f. Insurance Proceeds. PBT's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Client and Consultant, their elected or appointed officials, officers, employees, agents, contractors, and/or volunteers.

g. Declarations. PBT's obligations section shall not be limited by any prior or subsequent declaration by PBT.

h. Enforcement Costs. PBT agrees to pay any and all costs Client and Consultant incur enforcing the indemnity and defense provisions set forth herein.

i. Survival. PBT's obligations under section shall survive the termination of this Agreement.

j. No Alteration of Other Obligations. This section, shall in no way alter, affect or modify any of the PBT's other obligations and duties under this Agreement.

#### 14. Proprietary Rights

PBT retains all of its rights, title to, and ownership of all copyrights, trade secrets, and all other intellectual property relating or applying to the BeneTrac Service and any improvements or enhancements. Unless otherwise expressly set forth in this Agreement, Client or Consultant have no right, title, or ownership interest in the BeneTrac Service, and shall not copy, reproduce, reverse engineer, decompile, disassemble or otherwise use all or part of the BeneTrac Service. Upon termination of this Agreement, Client and Consultant shall immediately cease use of any of PBT's copyrights, trade secrets, and all other intellectual property related or applying to the BeneTrac Service and any improvements or enhancements thereto. Client or Consultant may not alter, modify, or change the BeneTrac Service without the prior written consent of PBT. Client or Consultant may use the trademarks or trade names as expressly permitted in writing by PBT and subject to compliance to PBT's trademark/tradename use policies. Client and Consultant acknowledge the validity of the trademarks and trade names and PBT's ownership of the trademarks and trade names and agree not to challenge PBT's rights to use the trademarks and trade names that PBT uses in connection with the BeneTrac Service and to indicate by the proper symbol that all such trademarks or trade names are proprietary in nature to PBT. Upon termination of this Agreement, Client and Consultant shall immediately cease use of any of PBT's trademarks and/or tradenames. Client and Consultant agree not to use the trademark, trade names, or other marketing of PBT or any confusingly similar work or symbol, as part of their own name or the names of the products they market without PBT's consent, which may be withheld at PBT's absolute discretion.

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## 15. Taxes

Any fees due to PBT pursuant to this Agreement are exclusive of, and Client and Consultant shall pay and shall indemnify and hold PBT harmless against, any liability for any sales, use, property, license, value added, withholding, excise or similar tax, whether federal, state, or local, that may be imposed or assessed in connection with the BeneTrac Service, its delivery, use or possession.

## 16. Service Level Agreement

a. Service Level Standards. PBT guarantees ninety-nine percent (99%) uptime of the BeneTrac system. Uptime is defined as available use of the BeneTrac system.

b. Report. When Client is not able to access the BeneTrac system, Client must notify PBT and open a ticket with PBT reporting such non-compliance of the system (Report). In order to receive a credit for the non-compliance of the BeneTrac system, in the amount detailed in subparagraph c in this Section 16, Client must report the non-compliance by **calling Customer Support or e-mailing PBT at support@benetrac.com** and making a request in writing for a credit from PBT within five (5) days of completing the report. Upon receiving Client's request in writing, PBT will determine, in its reasonable commercial judgment, whether the BeneTrac Service was unavailable, and make an appropriate credit in accordance with subparagraph c in this Section 16.

c. Credit. In the event PBT is unable to achieve the Service Level Standard, as set forth in subparagraph a of this Section 16, for any one month, PBT will provide a credit, subject to subparagraph b of this Section 16, based on the downtime experienced by Client, equal to the following: each hour of downtime in excess of the guarantee shall constitute an hour of credit. All credits will appear as a line item on the monthly invoice following the non-compliance.

d. Events Beyond Control of PBT. The Service Level Standard measurements outlined in subparagraph a of this Section 16 does not include downtime resulting in whole or in part from one or more of the following causes: (i) Any act or omission on the part of Client or Consultant or their respective officers, directors, employees, contractors insurance carriers, or other agents; (ii) Client or Consultant's applications, equipment, or facilities including any third party equipment; (iii) PBT or Client scheduled maintenance; (iv) Labor strikes; (v) Force majeure events beyond reasonable control of PBT, including, but not limited to, acts of God, government regulation and national emergency; and (vi) Service outages attributable to PBT's Internet service providers or any other circumstance outside of PBT's reasonable control.

## 17. General Provisions

a. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of California. All parties, to the extent permitted by law, consent to the exclusive jurisdiction and venue of the state and federal courts located in San Diego County, CA, USA for the adjudication of any disputes arising from, related to or regarding the subject matter of this agreement.

b. Severability; Headings. If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way.

c. Force Majeure. If performance hereunder is prevented, restricted or interfered with by any act or condition whatsoever beyond the reasonable control of a party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference. Each party acknowledges that the operation of the other party's website and services may be interfered with by numerous factors outside of a party's

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control, and neither party guarantees continuous or uninterrupted availability of its services or products.

d. No Joint Venture. The parties are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by this Agreement. Neither party shall make any warranties or representations on behalf of the other party(ies).

e. Compliance with Laws. At its own expense, each party shall comply with all applicable laws, regulations, rules, ordinances and orders regarding the marketing, promotion and performance of its obligations hereunder.

f. Notice. Any notices hereunder shall be given to the appropriate party at the address the party specifies in writing. Notice shall be deemed given: upon personal delivery; if sent by fax or email, upon confirmation of receipt; or if sent by certified or registered mail, postage prepaid, five (5) days after the date of mailing.

g. Entire Agreement; Waiver. This Agreement sets forth the entire understanding and agreement of the parties, and supersedes any and all oral or written agreements or understandings between the parties, as to the subject matter of this Agreement. It may be changed only by a writing signed by Client, Consultant and PBT. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

h. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

i. Assignment; Obligations of Successors. This Agreement shall not be assigned by a party without the prior written consent of the other parties, which consent shall not be unreasonably withheld; *provided, however*, that a party may assign this Agreement and its rights and obligations hereunder without any other party's consent (a) in connection with the transfer or sale of all or substantially all of the business of such party to which this Agreement relates to a third party, whether by merger, sale of stock, sale of assets or otherwise, or (b) to any affiliate. Except as provided in Section 6(b), the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, or to their heirs, personal representatives, successors and assigns respectively.

j. Administrative Claims Requirements and Procedures. No suit shall be brought arising out of this Agreement, against Client unless a claim has first been presented in writing and filed with Client and acted upon by Client in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by Client in the implementation of same. Upon request by Client, PBT shall meet and confer in good faith with Client for the purpose of resolving any dispute over the terms of this Agreement.

k. Breach Notification. Paychex has established policies and procedures to comply in a timely fashion with applicable legal requirements related to privacy, data security, and notification.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**Client**

*City of Chula Vista*

**Client Data Authorization**

Paychex Benefit Technologies, Inc. dba BeneTrac is authorized to collect and store enrollment and demographic data online on our behalf. We have instructed PBT to share the enrollment data, as needed, with all our insurance carriers and service providers.

  
Authorized Representative

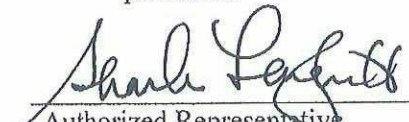
*Gary Halbert, City Mgr.* 7-14-15  
Print Name & Title Date

**Consultant**

*Barney & Barney*

**Consultant Data Authorization**

Paychex Benefit Technologies, Inc. dba BeneTrac is authorized to collect and store enrollment and demographic data online on our Client's behalf. We have instructed PBT to share the enrollment data, as needed, with the Client's insurance carriers and service providers.

  
Authorized Representative

*SHARLENE LANGHOFF*  
Print Name & Title  
**CLIENT CONSULTANT**

7/8/2015  
Date

*Paychex Benefit Technologies, Inc., dba BeneTrac*

2385 Northside Drive, Suite 100  
San Diego, CA 92108  
P: (619) 788-5800, Toll free: (877) 645-4342  
<http://www.benetrac.com>

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Date

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## Fee Schedule Addendum to the BeneTrac Service Agreement

The fee schedule for the first term of service shall be as follows:

Funding Source(s)	Covered Employees	Funding Period	One time Implementation fee (2 x PE*)	Recurring PEEP**
City of Chula Vista (BeneTrac)	All Enrolled	Training Date -12 Months	\$6.50	\$3.25
City of Chula Vista (ESR)	All Enrolled	Training Date -12 Months	\$0.00	\$0.25
Less Implementation Fee Discount	All Enrolled		-\$6.50	N/A
<b>Total</b>			<b>\$0.00</b>	<b>\$3.50</b>

\* PE - Per Employee

\*\* PEEP - Per Enrolled Employee Per Month

### Payment of fees

PBT shall be responsible for monthly invoices, including any one-time fees, to each funding source of the Client and the collection of any outstanding fees.

a. Carrier subsidies. Carrier subsidies may be revoked or modified at any time at the discretion of the funding carrier. In the event that a carrier ceases funding, Client has the option to continue the service and provide new funding instructions to PBT or terminate the system immediately. If Client opts to continue the service, new funding instructions must be provided within ten (10) days of termination of the carrier subsidy.

b. The payment of fees shall be due in advance for any employee who is enrolled in at least one benefit plan on the first day of each month, *subject to a \$425 per month minimum*. Payments shall be due within fifteen (15) days after Client's/Consultant's receipt of invoice from PBT, detailing such amounts. Service fees commence when Client's Primary User(s) have been trained and the BeneTrac Service has been made available for use by Client/Consultant. Billing of service fees will commence prior to the establishment of electronic data feeds and is independent of plan effective dates.

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c. Implementation fee. The non-refundable implementation fee is an amount equal to two times the estimated number of total employees at the time of order, at PEEP service fees, subject to a minimum fee of \$900 and a maximum of 12 plans. Actual count must be within ten percent (10%) of estimate; otherwise the implementation fee will be recalculated based on the actual number of employees enrolled in at least one benefit plan for the first month of the BeneTrac Service. Implementation will commence upon receipt of the completed order form, implementation fee and the fully executed Service Agreement. The implementation fee will be waived provided that (i) Clients remain on the BeneTrac system for at least 12 months, and (ii) Implementation paperwork must be properly completed and submitted to BeneTrac by May 29, 2015. In the event that a Client terminates this Agreement prior to 12 months or implementation paperwork is not timely completed and submitted, the implementation fee will be due and payable, in addition to any amounts due pursuant to Section 6.f. of the Agreement.

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### Memorandum of Understanding Addendum to the BeneTrac Service Agreement

1. Client and Consultant understand that the BeneTrac service fees begin once the site is delivered, all data is imported into the system and administrative users are trained. No electronic data integrations will be delivered before this point. HR or other administrative users will be responsible for helping to reconcile discrepancies to facilitate the electronic data integration process.
2. Client and Consultant understand that BeneTrac service fees are based on any employee with at least one approved (Active or COBRA) enrollment, regardless of effective date on the 1<sup>st</sup> of the month.
3. Client and Consultant understand that Payroll and COBRA vendor integration will not be started until all data is reconciled and all other electronic data integrations are completed.
4. Client and Consultant understand that the electronic data integrations that have been presented as available are based on historical projects and current relationships. BeneTrac does not control the insurance carriers or service providers and cannot guarantee the existence or the continued availability of any electronic data integration with them.
5. Client and Consultant understand that the time needed to integrate all of my insurance carriers, payroll and COBRA vendors is variable. The process is potentially impacted by events outside the control of BeneTrac and cannot be predicted with certainty. BeneTrac's commitment is to diligently pursue integrating each insurance carrier or service provider regardless of timeframe.

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## Exhibit A — PBT Data Privacy Policy

Your privacy and the security of your data are of the utmost importance to us. This notice is provided to explain our online information practices and the choices you can make about the way your data is collected and used. To make this notice easy to find, it is available on our homepage and at every point where personally identifiable information may be requested.

### The Information We Collect

This notice applies to all information collected or submitted to the system bearing the name of BeneTrac. From time to time a Broker/Consultant distributor may give the system another name, but as long as the underlying system has the copyright and Security provisions of BeneTrac this Data Privacy Policy shall pertain in its entirety. The bottom of all pages will be marked to indicate the BeneTrac system's authenticity. The information collected in the system is for the sole purpose of supporting the management of an employee's benefits online.

Information collected: Name, Addresses, Email Address, Phone Number, Social Security Number, Date of Birth, Date of Hire, Salary, Group Benefit Plan Choices, Carrier Information, Group Number(s), Employee Classification, Spouse Name, Work Location, Job Title, Premium Amounts, Provider Codes, Dependent Names, Termination Date, Employee Contribution of Premium, User Name, Password, Effective Dates of Insurance Coverage, Reenrollment Date, Security Access Level.

Most of the information identified above will be common to all users. Data field selections are customizable and are determined by the Authorized Senior User for each Implementation.

### The Way We Use Information

All data belongs to the Employer Group and/or their Human Resources Department (The Data Owner). The data collected and any access by any individual or group to the data is always with the authorization of the Data Owner. Each site is configured to allow varying levels and means of access according to the instructions given by the Data Owner. The Data Owner identifies the Carriers that provide the Group's benefit plans. Additionally, any outside Administrators providing services to the Group may be given permission to make enrollment changes on behalf of the group if directed by the Data Owner. The system is designed to deliver data to the Carrier or Administrator electronically and in an encrypted format. If a data recipient is unable to receive electronic data files, BeneTrac will deliver data in the format acceptable to the recipient. If approved by the Data Owner, the group's Broker/Consultant will be given access to the data to provide more timely service through timely information. A Broker/Consultant's level of access can be regulated. Employees may be given access if authorized by the Data Owner. The level of access and data fields visible to the employee may be regulated. The system is designed to allow employees access only to their own records for enrollment, demographic changes, or limited to view only. Finally, we never use or share the data provided to us online in ways unrelated to those described above or without the written approval of the Data Owner. Our Data Privacy Policy describes only our use of your data and is not intended to represent the Privacy Policy of others given access to the data by the Data Owner and it is strongly recommended that all users ask those to whom they authorize access provide a Data Privacy Policy.

### Our Commitment to Data Security

BeneTrac has implemented a comprehensive information security program which contains administrative, technical and physical safeguards that are appropriate to safeguard Confidential Information. This is consistent with any applicable federal and/or state statutes or regulations. To prevent unauthorized access, maintain data accuracy, and ensure the correct use of information, we have put in place appropriate physical, electronic and managerial procedures to safeguard and secure the information we collect online. Within the system, data security measures include 128 Bit Encryption of any data that is transmitted over the Internet, Secure Socket Layers (SSL), User Name & Password access, each page user verification, and firewall technology. Security begins before you enter your User Name and Password keeping the data secure from start to finish.

### Our Commitment to Children's Privacy

The system and use of the system are not intended for access to children. The system is for the use of Human Resources, Employees, Broker/Consultant, Carrier and benefit Administrators. It is the direction of the Data Owner that allows access to the system and it is unlikely that children will be given access. Finally, all dependent data is only as needed for the enrollment criteria, and is customarily provided by the employee/guardian and kept secure as indicated above.

### How You Can Access Or Correct Your Information

The Data Owner can access all personally identifiable information at any time to make changes in the system. Additionally the Data Owner can allow the employee access to make changes or to read only and report back to the Data Owner to make any necessary changes. To protect the privacy of the data, we will take reasonable steps to verify user identity before and during use of the system to make changes.

### How To Contact Us

Should you have any questions or concerns about these privacy policies, please call us at our toll free number (877) 645-4342 or send us an email at [feedback@BeneTrac.com](mailto:feedback@BeneTrac.com).

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