



City Council Staff Report

DATE: May 18, 2016 Consent

SUBJECT: APPROVE AN AGREEMENT WITH TRANSCEND TECHNOLOGIES GROUP TO PROVIDE ELECTRONIC BENEFITS ADMINISTRATION SERVICES

FROM: David H. Ready, City Manager

BY: Department of Human Resources

SUMMARY

The City collects and maintains active and retiree health benefits data electronically and under agreements with benefit carriers electronically transmits benefit enrollment data on a regular basis to the carriers through Electronic Data Information (EDI) files. The city currently uses an online electronic benefits administration software program called Benefits Connect provided through Transcend Technologies Group for this service.

RECOMMENDATION:

1. APPROVE AN AGREEMENT WITH TRANSCEND TECHNOLOGIES GROUP TO PROVIDE ELECTRONIC BENEFITS ADMINISTRATION SERVICES EFFECTIVE JUNE 1, 2016."
2. Authorize the City Manager to execute any documents necessary to effectuate the above actions.

STAFF ANALYSIS:

Benefits Connect is an advanced, Electronic Data Information-enabled, web-based, employee benefits administration platform that electronically connects benefits data, employees, and carriers for benefits enrollment and administration. Benefits Connect is a cost-effective way to automate manual benefits processes and reduce administrative burdens.

The City has utilized Benefits Connect for the past 3 years to maintain benefit enrollments, process benefit changes and host benefit open enrollments for active

employees, retirees and cobra subscribers. Previously the City used a similar service for over 7 years until the service provider ceased to provide services.

Electronic data information (EDI) files are one of the highest priorities in maintaining data between the City and benefit carriers. The majority of benefit carriers require EDI files to be transmitted electronically to minimize errors and maximize efficiency. The City currently maintains and transmits 10 bi-weekly EDI files to ensure timely processing of employee benefit enrollments and changes. This allows the City's Human Resources Department to enter the data once and then file to our 10 benefit carriers electronically instead of entering the data on each carrier's site, drastically reducing our administrative burden. Benefits Connect also provides additional electronic reporting services such as requirements under the Affordable Care Act.

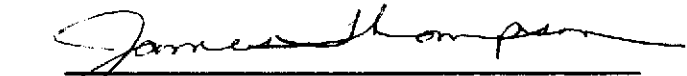
Staff recommends maintaining our current online service product with Benefit Connect. Implementation of an alternative benefits solution could result in 12 to 18 months of transition time based on past experience, could impact the efficiency and accuracy of our benefits processing and could incur additional cost and fees. Without a benefits enrollment and administration software program, there would be a need for additional staffing to maintain the current level of service to our employees and retirees.

FISCAL IMPACT

The agreement will provide a three year rate guarantee with an estimated annual cost of \$24,600.



Perry Madison
Director of Human Resources



James Thompson
Chief of Staff/City Clerk



David H. Ready, City Manager

Transcend Technologies Group, Inc. Technology and Services Agreement

This Technology and Services Agreement entered into between Transcend Technologies Group, Inc. (dba **benefitsCONNECT**), a California Corporation with its principal offices located at 3101 Zinfandel Drive, Suite 200, Rancho Cordova, CA 95670 (hereafter TTG) and Employer, whose name and principal business address are set forth below, collectively "the Parties", determines the rights and obligations of TTG and Employer with respect to the subject matter of this Agreement. All capitalized terms are defined in section 3.0 below unless specifically stated otherwise.

Effective Date:	The first day of June, 2016
Employer Name:	City of Palm Springs
Address:	3200 E. Tahquitz Canyon Way
City, State, Postal Code:	Palm Springs, CA 92262

1.0 Agreement and Term

- 1.1 During the Term and in accordance with this Agreement: (i) TTG grants Employer a nonexclusive, nontransferable right to use the Software for the sole purpose of agency management and/or the administration of employee benefits for the employees of Employer, (ii) TTG shall render and Employer shall license the Software, Training and Maintenance & Support.
- 1.2 Employer has the option to purchase Services, Outsourcing, Fulfillment and other Professional Services.
- 1.3 This Agreement shall commence on the Effective Date and, unless sooner terminated under Section 8.0 herein, shall continue for three (3) years ("Initial Period"). Thereafter, this Agreement shall automatically renew for successive periods of one (1) year each ("Renewal Period") unless a Party gives the other Party written notice of non-renewal at least sixty (60) days before the expiration date of the then current Renewal Period.

2.0 Commencement of Service

- 2.1 Commencing on the Effective Date, TTG shall provide Software, Training, Maintenance and Support, Billing, Outsourcing and Fulfillment services according to the availability of TTG's Service Schedules. Employer may also contract for Professional Services as more specifically set forth in section 3.15.
- 2.2 Employer understands that TTG's availability to perform these Services shall be provided on a "first-come, first-served" basis.

3.0 Definitions

- 3.1 "Administrator Account" means any user profile with access to more than one Employee Record.
- 3.2 "Agreement" means this Technology and Services Agreement and any exhibits, attached hereto, or otherwise incorporated herein by reference.
- 3.3 "Project Authorization Form" means the TTG standard form that sets forth a description of the Services and/or the Professional Services to be provided by TTG to Employer and requires Employer's signature to authorize the work to be performed. The Project Authorization Form may also reference a Statement of Work document when the Employer has requested Services and/or Professional Services that are to be invoiced at the hourly rate. Each Project Authorization Form will be governed by the terms of this Agreement and, if there is a conflict between a Project Authorization Form and this Agreement, the terms of this Agreement shall prevail.
- 3.4 "Employer" means the business entity identified above, which entity's employees have authorized the Employer to access and enter employee information into the Software.
- 3.5 "Effective Date" means the date entered in the outlined box above.
- 3.6 "Enhancements" means modifications, additions or substitutions, other than Maintenance Modifications, made by TTG to the Software at its sole discretion that accomplish incidental, performance, structural or functional improvements to the Software, to the extent that TTG elects to develop such Enhancements. Provided, however, and notwithstanding the foregoing, new application Modules which TTG markets separately from the Software shall not be included in the definition of Enhancements.
- 3.7 "Employee Record" means the collection of related items of information about an individual, treated as a unit, and stored in the Software database.
- 3.8 "Fulfillment" means TTG's process of developing, testing, extracting, delivering, supporting and monitoring data from the Software in an electronic and secure format, including but not limited to portable document format (PDF), Microsoft Excel (XLS), delimited or fixed length text (TXT) or Extensible Markup Language (XML) formatted files.
- 3.9 "Intellectual Property Rights" means all copyrights, confidentiality rights, trade secret rights, patent rights and other intellectual property rights which shall include, but not be limited to TTG's ownership of the Software and the TTG trademark and any other trademarks, sales marks, service marks, trade names, marketing

materials, distinguishing images or computer graphics, words, combination of words, audio recordings, computerized icons, Internet domain names or sub-names, or other TTG-related items used by TTG in promotion or providing the Software Services or any services relating thereto at any time prior to, during, or subsequent to the termination of this Agreement.

- 3.10 "Maintenance" means the TTG services that shall include: (i) providing and installing on TTG equipment any Enhancements to the Software, (ii) providing and installing on TTG equipment any Maintenance Modifications to the Software.
- 3.11 "Maintenance Modifications" means modifications, updates or revisions made by TTG at its sole discretion to the Object Code of the Software or to the User Manual relating thereto that correct errors or support a new release of the operating system.
- 3.12 "Module" means a unit of Software that adds additional functionality to the base Software.
- 3.13 "Object Code" means computer code in machine-readable, executable form, generated by compilation of source code and contained in a medium that permits it to be loaded into and operated on computers, and including any runtime modules or programming object libraries, text or graphic files or other data structures or code components necessary for the operational use of the Software.
- 3.14 "Outsourcing" means the initial setup by TTG of Employer and its employees within the Software, including, but not limited to, the configuration of the Employer's company, divisions (business units or locations), employment categories, payroll schedules, employee and dependent census, current enrollment elections, vendors, outline of benefits, plan designs, qualifying events and enrollment waivers.
- 3.15 "Professional Services" means the TTG services that are specified in a Project Authorization Form. The Professional Services may include, without limitation, the following types of services: data collection, consulting, design, coding, testing, installation, configuration and training.
- 3.16 "Services" shall mean the Software, Training, Billing, Maintenance and Support, Employer setup, and outsourced carrier fulfillment provided by TTG to Employer.
- 3.17 "Service Schedules" means the queue of TTG's current Training, Outsourcing and Fulfillment availability maintained on a first-come, first-serve basis.
- 3.18 "Software" means the **benefitsCONNECT**® and/or **agencyMANAGER** application program installed in Object Code format, any updates, revisions, new versions, supplements, all permitted copies of the foregoing supplied by TTG to Employer, related documentation, and media, whether in machine readable or printed form; for the purpose of Employer's enrollment and administration of employee benefits and/or agency management.
- 3.19 "Statement of Work" means the TTG standard document that sets forth a description of the Professional Services to be provided on an hourly basis by TTG to Employer.
- 3.20 "Support" means the TTG services that include providing Employer telephone and e-mail support during TTG's normal business hours for the purpose of enabling Employer to obtain information or resolve questions pertaining to the use of the Software.
- 3.21 "Term" means the Initial Period and any successive Renewal Periods.
- 3.22 "Training" means the phone or classroom training sessions made available to Employer by TTG, which are designed to educate and train on the step-by-step processes of configuring, administering and selling the Software and its different modules.
- 3.23 "User Manual" means the user documentation for the Software provided by TTG to Employer in printed or in electronic format and which may be amended from time to time by TTG.
- 3.24 The singular and plural shall each include the other, and this Agreement shall be read accordingly when required by the facts.

4.0 Obligations

- 4.1 All of the obligations of TTG or its designee to provide Services and/or Professional Services under this Agreement are conditioned upon Employer's provision and maintenance, at Employer's sole expense,

of Employer's hardware, third party software products, operating systems, database systems and communications equipment required to connect to, access and use the Software.

- 4.2 Employer shall not copy, transfer, modify, translate, reverse engineer, decompile or disassemble the Software and shall take all measures necessary to prevent others within its control from doing or attempting the same.
- 4.3 Employer shall not remove, attempt to remove, modify or obscure any copyright, trademark, patent or other proprietary notices from the Software, User Manual or any portion thereof, including without limitation, any component of the Software code of any kind or form which may be provided to Employer to enable Employer to access and/or use the Software.
- 4.4 If TTG determines that a service issue reported by Employer is (i) due to modification of the Software by Employer or an unauthorized third party, (ii) a result of Employer's failure to comply with the operating instructions set forth in the current version of the User Manuals, (iii) due to Employer's failure to comply with the terms of this Agreement, then all of TTG's time and expenses associated with providing support relating to or correcting such problem, shall be invoiced to Employer by TTG at the current Professional Services hourly rate and such invoice shall be paid by Employer subject to the provisions of this Agreement.
- 4.5 TTG does not guarantee its ability to exchange data electronically with benefit providers or other third party systems. TTG is not responsible for the integrity of the data transmitted electronically between Employer, benefit providers and third party systems. TTG reserves the right, in its sole discretion, to charge Fulfillment service fees to Employer for providing electronic data exchange capabilities between Employer, benefit providers and other third party systems.

5.0 Ownership and Confidentiality

- 5.1 Employer understands and agrees it has no right, title, interest or ownership in, or to, the Software, User Manuals, or any of its components, programming code or data structures, or any other materials provided to Employer related to the use of the Software, or any copies or modifications of the Software, User Manuals, or any components, code or data structures thereof or in the Software or any other materials provided to Employer related to the use of the Software, except to the extent that TTG grants Employer the right to use the Software, User Manual and related materials.
- 5.2 Employer understands and agrees that the Software, User Manuals, related materials and all security information and passwords issued for access to the Software (collectively "TTG Confidential Information") constitutes confidential and proprietary information and trade secrets of TTG or its suppliers. Employer shall maintain all TTG Confidential Information in strict confidence and shall not publish, communicate, disclose or permit to be disclosed such information in any way to third parties. Employer agrees to take all appropriate steps to ensure that all persons having access to the Software or User Manuals shall refrain from any unauthorized reproduction or disclosure of TTG's Confidential Information. Notwithstanding anything to the contrary herein, TTG's Confidential Information shall not include information that; (i) is known or available through other lawful sources not bound by a confidentiality obligation to TTG, (ii) is or becomes publicly known through no fault of the receiving party or its agents, (iii) is required to be disclosed pursuant to law or court order, provided that the discloser provides TTG with reasonable prior notice of any such compulsory disclosure and permits TTG to object, intervene or appeal such order.
- 5.3 TTG shall maintain Employer and/or Employee data in strict confidence and shall not publish, communicate, disclose, or permit to be disclosed such information in any way to third parties. TTG agrees to take all appropriate steps to ensure that all persons having access to any Employer and/or employee data shall refrain from any unauthorized reproduction or disclosure of Employer and/or employee data."
- 5.4 TTG understands and agrees that any Employer and/or employee data generated and stored by the Software on behalf of Employer by or through Employer's use of the Software constitutes confidential and proprietary information and trade secrets of Employer and shall remain Employer's sole and exclusive property.

6.0 Fees

- 6.1 All amounts due under this Agreement shall be paid in United States Dollars (USD).
- 6.2 **Per-Employee-Per-Month ("PEPM") Fees** – In consideration for any Software and Services provided hereunder that are specified in Exhibit C as being provided on a PEPM basis, Employer agrees to pay TTG, commencing with the Effective Date of this Agreement, a PEPM fee, computed by multiplying the number of Employee Records (classified as Active, COBRA, FMLA or Retired) by the PEPM rate listed

in Exhibit C, according to the terms of TTG's standard monthly invoice, net fifteen (15) days. Employer further agrees that the number and classification of Employee Records stored in the Software database when the census report is ran shall be a bona fide and accurate representation of the number and classification of Employee Records stored in the Software database over the course of the month.

- 6.3 **Per-Person-Per-Year ("PPPY") Fees** - In consideration for any Software and Services provided hereunder that are specified in Exhibit C as being provided on a Per-Person-Per-Year (PPPY) basis, Employer agrees to pay TTG, commencing with the Effective Date of this Agreement, a PPPY fee, computed by multiplying the number of persons (defined as a personnel record required by the IRS to be reported on an annual basis for Affordable Care Act (ACA)) by the PPPY rate listed in Exhibit C, according to the terms of TTG's standard invoice, net fifteen (15) days. This is generally applied to e-filing of the 1094/1095 forms to the IRS.
- 6.4 **Minimum Fees** – In the event that the monthly charge for PEPM services does not meet or exceed the monthly "Minimum" amount specified in Exhibit C, Employer agrees to pay TTG the monthly Minimum amount, according to the terms of TTG's standard invoice.
- 6.5 **Non-PEPM Fees** – In consideration for any Software and Services provided hereunder that are not included as PEPM services (including, but not limited to one-time EDI setup fees, one-time account setup fees, per-occurrence training fees, monthly data management fees, etc.), Employer agrees to pay TTG the rates listed in Exhibit C, according to the terms of TTG's standard invoice.
- 6.6 **Travel Expenses** – Employer shall pay or reimburse TTG for any expense incurred for travel in connection with TTG's performance of the Services provided under this Agreement, so long as the Employer authorizes the travel costs in advance.
- 6.7 **Other Fees** – If TTG is to incur any additional fees or expenses that are not within the scope of the Services, TTG shall notify Employer in advance for approval, and Employer shall pay the approved additional fees or expenses within the terms of the invoice.
- 6.8 Employer shall pay or reimburse TTG and shall be responsible for and shall indemnify, defend and hold TTG harmless from any applicable sales, use, excise, value added, utility or similar or other taxes related to the fees and services provided under this Agreement.
- 6.9 Unless specified otherwise in Exhibit C, the Fees shown in Exhibit C shall remain in effect for the terms specified in Section 1.3. TTG reserves the right to increase its Fees for any Initial or Renewal Period of this Agreement to current prevailing rates.
- 6.10 Any late payment shall accrue interest at the lesser of eighteen (18) percent per annum of the late amount or the maximum amount allowed by law

7.0 Discounts/Commission Splits

- 7.1 Business Associate has discounts available when using a TTG carrier partner.
- 7.2 Discount is not available if Business Associate's contract is in conflict with TTG's contract with the same carrier where discount is being provided.
- 7.3 To receive discount, initial enrollment period needs to have a minimum of 20% participation in the product offering that triggers the discount to be in place. For every 1% below the minimum participation, 10% will be reduced from the discount provided.
- 7.4 All discounts to be applied after the initial open enrollment closes and verification that participation numbers have been met.
- 7.5 Discounts are able to continue in if new products are offered in subsequent years along with the same participation requirements as in section 7.3.
- 7.6 Review of Discounts, commission splits, overrides and PEPM fees received will take place annually. TTG reserves the right to remove any discounts or offerings at the sole discretion of TTG.

8.0 Termination

- 8.1 TTG may terminate this Agreement upon any of the following events:
 - 8.1.1 If Employer fails to pay any amounts due to TTG within thirty (30) business days after Employer's receipt of written notice of such nonpayment from TTG;
 - 8.1.2 If Employer breaches any Intellectual Property Rights of TTG or its suppliers in the Software;
 - 8.1.3 If Employer attempts to manipulate the number of Employee Records on the last day of the month.
 - 8.1.4 If Employer breaches its confidentiality obligations under this Agreement;
 - 8.1.5 If Employer breaches any of the other terms, covenants, restrictions or conditions of this Agreement or its License to the Software and fails to cure the breach within thirty (30) days after Employer's receipt of written notice of such breach from TTG;

- 8.1.6 If Employer becomes insolvent or admits a general inability to pay its debts as they become due;
- 8.1.7 If Employer makes a general assignment for the benefit of creditors; or
- 8.1.8 If Employer files a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy that is not dismissed within sixty (60) days after the filing date.
- 8.2 Employer may terminate this Agreement and the rights and licenses granted upon any of the following events:
- 8.2.1 If TTG breaches any of its obligations under this Agreement and fails to cure the breach within thirty (30) days after receipt of written notice of such breach from Employer;
- 8.2.2 If TTG becomes insolvent or admits a general inability to pay its debts as they become due;
- 8.2.3 If TTG makes a general assignment for the benefit of creditors; or
- 8.2.4 If TTG files a petition in bankruptcy or is the subject of an involuntary petition in bankruptcy that is not dismissed within sixty (60) days after the filing date.
- 8.2.5 Notwithstanding any other provision to the contract, City may terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to TTG. TTG shall be entitled to all compensation for all services rendered prior to the effective date of the notice of termination
- 8.3 In the event of the expiration or termination of this Agreement, under Sections 8.1 or 8.2 herein, TTG may discontinue the Services and Employer's access to, and use of the Software, provided however, at the expense of the party causing the breach and upon request from Employer, within thirty (30) days following said termination or expiration, TTG will deliver to Employer all data stored by the Software on TTG's or third party equipment, as of the date of termination or expiration.
- 9.0 Warranties and Limitations of Liability**
- 9.1 TTG WARRANTS THAT DURING THE TERM IT SHALL PERFORM THE SERVICES UNDER THIS AGREEMENT USING COMMERCIALY REASONABLE EFFORT. TTG SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 9.2 EMPLOYER UNDERSTANDS AND AGREES THAT TTG'S LIABILITY FOR ANY DAMAGES SUFFERED BY EMPLOYER, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY THEORY, IN NEGLIGENCE, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT PAID TO TTG BY EMPLOYER PURSUANT TO THIS AGREEMENT DURING THE ONE (1) MONTH IMMEDIATELY PRIOR TO THE DATE UPON WHICH EMPLOYER'S CLAIM OR CAUSE OF ACTION AROSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, TTG SHALL NOT BE LIABLE TO EMPLOYER OR OTHERS FOR PUNITIVE OR EXEMPLARY DAMAGES OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OF EMPLOYER, EVEN IF TTG HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.3 FURTHER, EMPLOYER UNDERSTANDS AND AGREES THAT THE USE OF THE SOFTWARE MAY FROM TIME TO TIME BE INTERRUPTED, AND TTG MAKES NO WARRANTY OR REPRESENTATION TO EMPLOYER THAT THE SOFTWARE WILL BE FUNCTIONAL AND AVAILABLE AT ALL TIMES. EMPLOYER SHALL NOT BE ENTITLED TO RECOVER FOR ANY LOSSES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF DATA, WHICH MAY RESULT FROM SUCH INTERRUPTION OF AVAILABILITY OF THE SOFTWARE. NOTWITHSTANDING ANY OTHER LIMITATION OF LIABILITY IN THIS AGREEMENT, IN THE EVENT THAT USE OF THE SOFTWARE IS INTERRUPTED FOR MORE THAN A 24 HOUR PERIOD, TTG AGREES TO CREDIT EMPLOYER IN AN AMOUNT EQUAL TO THE PRORATED PEPM FEES (AS SET FORTH IN EXHIBIT C) OTHERWISE DUE FROM THE EMPLOYER FOR EACH DAY THAT THE SOFTWARE IS NOT FUNCTIONAL OR OTHERWISE UNAVAILABLE.
- 9.4 **Internet Delays.** TTG's services may be subject to limitations, delays and other problems inherent in the use of the Internet and electronic communications. TTG is not responsible for any delays, delivery failures or other damage resulting from such problems.
- 10.0 Indemnification**
- 10.1 In the event any suit or claim is brought against Employer based on a claim that the authorized use of the Software under this Agreement infringes any existing Intellectual Property Rights of a third party, TTG agrees that:
- 10.1.1 To the extent that the claims or proof of the suit involve claims or factual allegations that the Software infringes any existing Intellectual Property Rights of a third party, TTG shall defend the suit at its expense and hold Employer harmless thereof, provided however that Employer promptly notifies TTG in writing and gives TTG complete authority and the information required to defend or settle the suit;
- 10.1.2 TTG shall pay any settlement of the suit or claim agreed to by TTG and to the extent that any judgment in any such suit is based on proof that the Software infringes any existing Intellectual Property rights of a third party, TTG shall pay all damages and costs awarded against Employer related thereto; provided however that TTG shall not be responsible for any cost, expense or compromise made or incurred by Employer without TTG's prior written consent;
- 10.1.3 TTG shall allow Employer to participate in the defense of the suit at Employer's own expense, if Employer so elects; and
- 10.1.4 Notwithstanding anything to the contrary in this Agreement, TTG shall have no obligation of indemnity with regard to any modifications of any kind by Employer, regardless of whether such changes were authorized.
- 10.2 In the event any suit or claim is brought against TTG based on a claim that Employer improperly collected, used or disseminated any information or other data using the Software, Employer agrees that:
- 10.2.1 Employer shall defend the suit at its expense and hold TTG harmless therefrom, provided however that TTG promptly notifies Employer in writing and gives Employer complete authority and the information required to defend or settle the suit;
- 10.2.2 Employer shall pay any settlements of the suit or claim agreed to by Employer and to the extent that any judgment in any such suit is based on proof that Employer improperly collected, used or disseminated any information or other data using the Software, Employer shall pay all damages and costs awarded against TTG related thereto; provided however that Employer shall not be responsible for any cost, expense, or compromise made or incurred by TTG without Employer's prior written consent; and
- 10.2.3 Employer shall allow TTG to participate in the defense of the suit at TTG's own expense, if TTG so elects.
- 11.0 Protected Health Information**
- 11.1 Employer and TTG agree to comply and modify the Agreement as necessary to comply with the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as set forth in Title 45, Parts 160 and 164 of the Code of Federal Regulations (the "CFR").
- 11.2 Capitalized terms not otherwise defined in the Agreement shall have the meanings given to them in Title 45, Parts 160 and 164 of the CFR and are incorporate herein by reference.
- 11.3 Protected Health Information ("PHI") means any information, whether oral or recorded in any form or medium that: (i) relates to the past, present, or future physical or mental condition of an Individual; the provision of health care to an Individual or the past, present or future payment for the provision of health care to an Individual; and (ii) identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual and shall have the meaning given to such term under HIPAA and the HIPAA Privacy and Security Regulations, including, but not limited to Title 45, Parts 160 and 164 of the CFR. The Term "PHI" includes electronic PHI as that term is defined under the Security Regulations.
- 11.4 Employer shall use and/or disclose PHI only to the extent necessary to satisfy Employer's obligation under the Agreement. TTG shall use and/or disclose PHI only to the extent necessary to satisfy TTG's obligations under the Agreement. To the extent that the parties can limit uses and/or disclosures of PHI to a Limited Data Set (as defined in the HIPAA Regulations), each party agrees to do so. If use of a Limited Data Set is impracticable, the party using and/or disclosing PHI will document the necessity for use of additional PHI.
- 11.5 Neither party shall use or disclose any PHI received from or on behalf of a Covered Entity or Individual, except as permitted or required by the Agreement, as required by law or as otherwise authorized in writing by the respective party, a Covered Entity or an Individual.
- 11.6 Employer and TTG shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards to prevent the improper use or disclosure of any PHI.
- 11.7 Employer and TTG shall develop, implement, maintain and use appropriate administrative, technical and physical security measures in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320d-2(d) of the United States Code and Title 45, Part 160 and Part 164 of the CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted Health Information received from or on behalf of a Covered Entity or Individual.

Employer and TTG shall document and keep these security measures current.

- 11.8 TTG and Employer shall ensure that any employee or subcontractor to whom it provides PHI agrees to the same restrictions and conditions that apply through this Agreement with respect to PHI.
- 11.9 Employer shall document disclosures of PHI and information related to such disclosures as would be required for TTG to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Part 164, Subpart E, Section 164.528 of the CFR.
- 11.10 Employer agrees to provide TTG or an Individual, within thirty (30) days written notice, information collected in accordance with Section 11.9 above, to permit TTG to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Part 164, Subpart E, Section 164.528 of the CFR.
- 11.11 TTG and Employer shall implement a procedure for notifying each other of any breach of unsecured PHI for which notification by the Employer to the affected individuals is required pursuant to the Notice Regulations published by the Secretary of Health and Human Services pursuant to Section 13402 of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"). Notification of a breach of unsecured PHI will be provided to the appropriate parties as soon as practicable upon discovery, but in no event later than 10 calendar days after discovery. Such notice shall include all information needed for the Employer to fulfill its obligations under the Notice Regulations.

12.0 Miscellaneous

- 12.1 **Assignment.** Employer shall not assign this Agreement or transfer, by operation of law or otherwise, any of its respective rights or obligations under this Agreement (including, without limitation, by a change in the majority ownership or control of Employer) without the prior written consent of TTG, such consent shall not be unreasonably withheld. Any assignment or transfer in violation of this section shall be void.
- 12.2 **Waiver.** No term or provision of this Agreement shall be deemed waived and no breach shall be deemed excused, unless such waiver is in writing and signed by the Party who is alleged to have waived the term or provision.
- 12.3 **Excusable Delay.** Neither TTG nor Employer shall be deemed to be in default of any provision of this Agreement or for any failure in performance, resulting from acts or events beyond the reasonable control of TTG or Employer, as the case may be. For purposes of this Agreement, such acts shall include, but not be limited to, acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes or other such major events beyond TTG's or Employer's reasonable control. This section shall not excuse Employer's payment obligations.
- 12.4 **Governing Law and Dispute Resolution.** This Agreement is governed by and construed in accordance with the laws of the State of California, without giving effect to any choice or conflict of law provisions, principles or rules (whether of the State of California or any other jurisdiction) that would cause the application of any laws of any jurisdiction other than the State of California. The parties agree that all claims, actions, suits and proceedings between them relating to this Agreement will be filed, tried and litigated only in the Circuit or District Courts of Sacramento County, California. In connection with the foregoing, the parties consent to the jurisdiction and venue of those courts and expressly waive any claims or defenses of lack of jurisdiction of or proper venue by those courts.
- 12.5 **Legal Fees and Costs.** The prevailing Party shall be entitled to collect from the other Party the prevailing Party's reasonable legal fees and costs in connection with the enforcement of this Agreement.
- 12.6 **Independent Contractor.** TTG is providing the Services under this Agreement as an independent contractor, and its personnel shall not be considered employees or agents of Employer.
- 12.7 **Severance and Interpretation.** If any provision of this Agreement is found to be unenforceable, such provision shall be deemed to be deleted or narrowly construed to such extent as is necessary to make it enforceable and this Agreement shall otherwise remain in full force and effect. If any ambiguity or question of intent arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of authorship of any of the provisions of this Agreement.
- 12.8 **Time Limitation.** Except for actions for non-payment or for breach of TTG's or its third parties Intellectual Property Rights, no action arising out of or relating to this Agreement may be brought later than two (2) years after the cause of action became known to the injured Party.
- 12.9 **Notices.** All notices required or permitted under this Agreement and all requests for approvals, consents, and waivers must be delivered by

a method providing for proof of delivery. A confirmed facsimile transmission shall be deemed to provide proof of delivery. Any notice or request will be deemed to have been given on the date of delivery. Notices and requests must be delivered to the Parties at the addresses on the first page of this Agreement until a different address has been designated by notice to the other Party.

- 12.10 **Non-Solicitation of Employees.** Neither Party shall directly solicit the services or employment of any employee of the other Party during the Term. The soliciting Party, who violates this section, shall pay to the other Party an amount equal to one (1) year's salary for any solicited employee of the other Party, as liquidated damages and not as a penalty. The amount of annual salary shall be the annual salary in effect at the date the employee was solicited. For purposes of this section, the term "employee" means current or former employees of the other Party who were employed by the other Party within three (3) months before solicitation occurred.
- 12.11 **Publicity.** Either Party may (in any press release, advertising or other publicly-disseminated materials) refer to the other Party, to the Services provided under this Agreement, and to background information leading to this Agreement, including, for example: TTG competitors and competing products considered by Employer, net value of the Agreement, and Employer business needs and reasons for selecting TTG. Before disclosing this information publicly, the disclosing party shall review the factual content of the disclosures with the other Party and obtain the other Party's consent prior to disclosure. In any event, neither Employer nor TTG shall publicly disclose special pricing, discounts, payment terms or addenda contained in, or attached to, this Agreement.
- 12.12 **Entire Agreement.** This Agreement and the Exhibits listed below and referred to herein, together with any addenda signed by the Parties (collectively, the "Agreement"), constitute the entire agreement between TTG and Employer with respect to the License, Services, Software and other subject matter of this Agreement, and may only be modified by a written amendment or addendum signed by both TTG and Employer. No employee, agent or other representative of either TTG or Employer has authority to bind the other with regard to any statement, representation, warranty, or other expression unless it is specifically included within the express terms of this Agreement or a written addendum signed by both TTG and Employer. All purchase orders, prior agreements, representations, statements, proposals, negotiations, understandings, and undertakings with respect to the subject matter of this Agreement are superseded by this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers or representatives as of the day and year set forth above.

For Transcend Technologies Group, Inc.:

Scott Evans
Scott Evans (May 3, 2016)

 (Signed)
 Scott Evans

 (Printed)
 Chief Operating Officer

 (Title)
 May 3, 2016

 (Date)

For City of Palm Springs:

 (Signed)

 (Printed)

 (Title)

 (Date)

Exhibit A
Notices and Contact Information

1.0 Notices from Employer shall be sent to:

**Transcend Technologies Group, Inc.
3101 Zinfandel Drive, Suite 200
Rancho Cordova, CA 95670**

2.0 Notices from Transcend Technologies Group shall be sent to:
(Please provide Employer Contact Information)

Company Name _____

Company Street Address _____

Company Street City _____

Company Street State _____

Company Street Postal Code _____

Primary Contact Name _____

Primary Contact Phone Number _____

Primary Contact Fax Number _____

Primary Contact Email Address _____

Company Billing Address _____

Company Billing City _____

Company Billing State _____

Company Billing Postal Code _____

Billing Contact Name _____

Billing Contact Phone Number _____

Billing Contact Fax Number _____

Billing Contact Email Address _____

Exhibit B

Optional Payment Authorization – Monthly Fees

Please complete the appropriate section for your preferred method of payment. Please provide a photocopy of the credit card or voided bank check in lieu of the bank information below along with the signed copy of this form.

I authorize Transcend Technologies Group to initiate monthly deduction from my account shown below, for the amount and period specified, for payment of monthly fees.	
Credit Card Information	
Client Name:	_____
Name on Card:	_____
<input type="checkbox"/> Visa	<input type="checkbox"/> MasterCard <input type="checkbox"/> American Express
Card Number:	_____
Security Code:	_____
Expiration Date:	_____
Billing Address:	_____
City:	_____
State, Postal Code	_____
EFT Information	
Name on Account:	_____
Account Number:	_____
Bank Name:	_____
Bank Routing Number (9 digits):	_____
Invoicing Information	
<input type="checkbox"/>	Same as previous page
Company Billing Address:	_____
Company Billing City:	_____
Company Billing State:	_____
Company Billing Postal Code:	_____
Billing Contact Name:	_____
Billing Contact Phone Number:	_____
Billing Contact Fax Number:	_____
Billing Contact Email Address:	_____
I understand this authority is to remain in full force and effective until Transcend Technologies Group has received written notification from me of its termination in such time and manner as to afford Transcend Technologies Group and depositor a reasonable opportunity to act upon it. I have the right to stop payment of deduction to my credit card or bank account by notification to Transcend Technologies Group thirty (30) business days or more before this payment is scheduled to be made.	
Signature:	_____ Date: _____

Addendum B

May 3, 2016

Addendum B serves to amend the Technology and Services Agreement dated 6/1/2016 between Transcend Technologies Group, Inc. and the City of Palm Springs, hereby referred to as the Employer. Therefore, in consideration of and reliance upon the terms and conditions set forth herein, the parties agree to the following amendment explanations:

Section 4.5 - This explanation is in addition to the language written in the agreement. This section is put in place in the rare event a carrier or TPA is unable to communicate using EDI technology. Therefore, TTG cannot be held liable for a carrier's technical incompetency. Part of our service offering is to provide EDI connections with EDI capable carriers and should a problem arise, we will work with the carrier and the Employer to find a solution agreeable to all parties involved. Employer will be responsible in maintaining the integrity of the data transmitted electronically between Employer, benefit providers and third party systems. Employer carries the responsibility of keying in the data into the benefitsCONNECT® system; TTG carries the responsibility of transmitting the data electronically from benefitsCONNECT® to the carriers in question.

Section 6.9 – This explanation is in addition to the language written in the agreement; during the renewal process, if there is a more favorable pricing structure available to Employer, TTG will make it available for the new term.

Section 10.2 – benefitsCONNECT® agrees to strike section 10.2 and instead will adhere to federal HIPAA regulations in the event of a suit or claim brought against Employer or TTG based on a claim that Employer improperly collected, used or disseminated any information or other data using the software.

Section 12.13 Conflict of Interest. TTG acknowledges that no officer or employee of the City has or shall have any direct or indirect financial interest in this Agreement nor shall TTG enter into any agreement of any kind with any such officer or employee during the term of this Agreement and for one year thereafter. TTG warrants that TTG has not paid or given, and will not pay or give, any third party any money or other consideration in exchange for obtaining this Agreement.

Section 12.14 Covenant Against Discrimination. In connection with its performance under this Agreement, TTG shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, physical or mental disability, or medical condition. TTG shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, sexual orientation, gender identity, physical or mental disability, medical condition, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

In witness whereof, the parties have executed this Addendum by their duly authorized officers or representatives as of the day and year set forth above.

For Transcend Technologies Group, Inc.

Scott Evans
Scott Evans (May 3, 2016)

Signed

Scott Evans

Printed

Chief Operating Officer

Title

May 3, 2016

Date

City of Palm Springs

Signed

Printed

Title

Date

Exhibit C: Pricing Schedule**benefitsCONNECT® Employer Package Pricing**

benefitsCONNECT® offers an online benefits administration and enrollment solution designed to streamline the open enrollment process and provide year-round access to benefits information. Our Employer Package offering is available to groups with 100-5,000 lives. (Please see Employer A La Carte Pricing for groups with more than 5,000 lives.)¹

Our in-house Client Services and Support Team provides implementation services as well as year-round support with a dedicated account manager, ensuring that you and your team have all the support you need on an on-going basis. Your benefitsCONNECT® account manager will work directly with your HR team and can assist with mid-year changes. This package also includes setup for Evidence of Insurability (EOI) questions and up to twelve (12) carrier connections.

Group Minimum – \$500 per month.

Traditional Package	\$3.15	Per Employee	Per Month
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¹ Package Pricing requires an annual commitment.

² Pricing is calculated on a Per Employee Per Month (PEPM) basis as shown. At the end of each month, the number of Active, COBRA, FMLA and Retired employees in your system are tallied and you are billed accordingly. There is no charge for Inactive, Terminated, or Deceased employee records.

³ Note: Package pricing requires a 100 life minimum.

benefitsCONNECT® Package Services

Includes year-round assistance with ongoing data imports, updates and testing for the employer group, and up to twelve (12) carrier connections. A dedicated account manager is available to the broker **or group** via phone/email year-round. Includes the following for each employer group:

- Welcome/introduction call
- “Kick off” and initial planning meeting
- **benefitsCONNECT®** Implementation project review
- Regular project communications with specialist
- Provision of file formats necessary for a seamless EDI integration
- Employee census consultation and updates
- Plan testing coordination
- One (1) hour system overview with Q&A (broker & HR Team) – includes a tutorial on:
 - Change Company Level Settings
 - Add/Maintain Employees
 - Change Benefit Level Settings
 - Configure & Run Reports
 - Schedule Reports
 - Answer Common Questions
 - Assistance with resolution of carrier data discrepancies
 - Assistance with system, plan, and employee updates (as necessary)
 - Assistance with ad hoc report services (creating, running, scheduling custom reports)
 - Employer group training

Connectivity Services

Electronic Data Interchange (EDI)/Integrations/Plug-ins ⁴⁵

Connections – Includes twelve (12) carrier connections. There are 10 currently in place and an additional two will be allotted for CalPers.

Programming – Includes the following for each Export/Connection:

- Provide client with free access to **benefitsCONNECT**®'s online web-based project tracking software (EDIE)
- Discovery/Analysis – Review file specifications with the carrier and define mapping rules
- Programming
- Testing (Structural, Scenario, and Discrepancy)/Documentation
- Promotion to Production

Maintenance/Monitoring/Support

Maintenance, monitoring, and support include the following for each Export/Connection:

- Project Meetings
- Unlimited Data Transactions/Ongoing File Export Monitoring
- Support for Export File Format Changes Updates (including mandatory carrier updates)
- Support for Bug Fixes
- Open Enrollment rollovers for new plan years for standard exports⁶
 - Manual upload services for carriers without an automated file transport mechanism

Client Expectations

- Client will be responsible for reaching out to carriers to make sure they will accept EDI files for specific groups
- Client will provide **benefitsCONNECT**® with the technical contact at the carrier side
- Client will be responsible for fixing data issues as a result of discrepancies between **benefitsCONNECT**® and carrier systems enrollment data
 - Client will ensure that **benefitsCONNECT**® software is updated with most up-to-date enrollment data once initial enrollments have been loaded

⁴ All additional feeds are subject to monthly maintenance charges of \$75 per feed. Additional programming costs resulting from broker change requests will be subject to hourly charges.

⁵ Note: EDI services require 100 life minimum.

⁶ Open enrollment rollover is covered for all exports connected to individual groups. Any consolidated (multi-company) rollover will be subject to hourly charges.

Additional Services

Rush Fees

Ask your account executive for a quote.

Connectivity

Additional EDI connections/integrations/plugin include a monthly \$75 per feed maintenance and support fee.⁷

Additional Carrier Connections

EDI Connections /Integrations/Plug-ins – \$995 per feed setup (per group) + \$75 per month maintenance fee.

Payroll / HRIS – \$5,495 per feed setup (per group) + \$75 per month maintenance fee.⁸ Employee and employer deduction reporting—shows all deductions. Files can be customized to the payroll vendor’s preferred format. Generate and distribute plan enrollment data.

Payroll Deductions Only – \$2,495 per feed setup (per group) + \$75 per month maintenance fee. Employee deduction reporting in a variety of formats.

Forms Development – \$695 setup + hourly quote (custom questions, one-time spreadsheets etc.).

Additional Development – Hourly fee of \$295 with a two hour minimum for all work.

Implementation

Evidence Of Insurability Questions – \$1,995 per carrier per group setup in **benefitsCONNECT®**.

Hourly Work – \$195 per hour and quoted upfront for any project (i.e. billing reconciliation, invoicing module setup, etc.).

Ad hoc Reporting and Data Import/Export Services – \$1,295 per month. Manipulating data will be a thing of the past. Save time by providing us your data and we will organize it, import and/or export per your instructions. Use this service to create ad hoc reports to capture specific data points in a repeatable format.

⁷ Additional programming costs resulting from broker change requests will be subject to hourly charges.

⁸ **benefitsCONNECT®** guarantees that we will provide each payroll vendor – or the company HR staff – with data required to process payroll successfully; however, **benefitsCONNECT®** does not guarantee payroll connectivity with every provider.

Additional Services

complianceCONNECT

Broker Account – \$20 per user per month (on demand support can only be utilized for their agency and can't be utilized to service clients – violation constitutes a disconnection).

Employer Group Account – \$30 per user per month and includes on demand support.

Communications/Media

Avatars – Call for quote.

benefitsGUIDES

Setup – \$2,500 per guide setup (includes design for the first 8 pages).

Additional Pages – \$500 per 4 pages.

Training

Offsite Training – \$5,900 plus travel expenses for trainer (ask for a quote).

ACAManager with benefitsCONNECT

E-file	\$3.00	Unlimited	PPPY ¹
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Client Signature

Date

Print Name

¹PPPY – Per Person Per Year
There is a 250 EE life minimum for all ACAManager services.