

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Oct 9, 2014

Action Requested By: Human Resources

Agenda Type: Resolution

Subject Matter:

Confidentiality and Nondisclosure Agreement with Blue Cross and Blue Shield of Alabama and Benefitfocus.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Confidentiality and Nondisclosure Agreement with Blue Cross and Blue Shield of Alabama and Benefitfocus for the purpose of analyzing claims data and eligibility.

Note: If amendment, Please state title and number of the original

Item to be considered for: _____

Unanimous Consent Required: _____

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

This agreement is needed to authorize the provision of claims data and eligibility information to be received by Benefitfocus from Blue Cross and Blue Shield of Alabama for data analytics.

Associated Cost: _____

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: *[Signature]*

Date: 10/8/14

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Human Resources

Council Meeting Date: 10/9/2014

Department Contact: Cindy Lehman

Phone # 256-427-5244

Contract or Agreement: Confidentiality and Nondisclosure Agreement with Blue Cross and Blue Shield ...

Document Name: Confidentiality and Nondisclosure Agreement

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

<u>Select...</u>	<u>Select...</u>
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Grant-Funded Agreements

<u>Select...</u>	Grant Name: <input type="text"/>
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Department	Signature	Date
1) Originating		10/8/14
2) Legal		10-8-14
3) Finance 		10/8
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 14-_____

WHEREAS, Blue Cross and Blue Shield of Alabama currently administers the group health insurance plans offered by the City of Huntsville; and

WHEREAS, the City of Huntsville is entering into an agreement with Blue Cross and Blue Shield of Alabama to continue administering the City of Huntsville's group health insurance plans; and

WHEREAS, the City of Huntsville desires to obtain analysis of claims data from Blue Cross and Blue Shield of Alabama through Benefitfocus to determine health care cost trends for the coordination of wellness activities through the City's Employee Health and Wellness Center and the City's group health plans;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into a Confidentiality and Nondisclosure Agreement between Blue Cross and Blue Shield of Alabama, Benefitfocus and the City of Huntsville, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as an "Confidentiality and Nondisclosure Agreement," consisting of 3 pages including exhibits and the date of October 9, 2014 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the _____ day of October, 2014.

President of the City Council of the
City of Huntsville, Alabama

APPROVED this the _____ day of October, 2014.

Mayor of the City of
Huntsville, Alabama

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement is made and entered into this 21 day of August, 2014 by and between Blue Cross and Blue Shield of Alabama having its principal place of business at 450 Riverchase Parkway East, Birmingham, Alabama 35244, Benefitfocus having its principal place of business at 100 Benefitfocus Way, Charleston, SC and City of Huntsville having its principal place of business at 308 Fountain Circle, Huntsville, AL.

WHEREAS, one or both of the Parties wish to receive certain Confidential Information (as defined below) from the other for the purpose of claims data and eligibility;

WHEREAS, one or both of the Parties will disclose (each a "Disclosing Party") Confidential Information to the other Party (each a "Receiving Party"), subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises herein set forth, the Parties agree as follows:

- 1. Definition of Confidential Information.** The Confidential Information that the Disclosing Party is supplying to the Receiving Party under this Agreement is described generally as information relating to the Disclosing Party's business processes, services, ideas, systems, clinical programs, pricing, accounting and other financial information, insurance, associate relations and other human resource information, marketing and merchandising information including current and future product information, and general proprietary business information ("Confidential Information").
- 2. Use of Confidential Information.** The Receiving Party may use and disclose Confidential Information only for the purpose described herein, and only as necessary to perform its services relating thereto. The Receiving Party further agrees not to use Confidential Information for any purpose, except that set forth above. Further, the Receiving Party shall not, either directly or indirectly, disclose, use or reproduce Confidential Information without prior written authorization from the Disclosing Party.
- 3. Duty to Protect.** Except as provided in section 5 below, the Receiving Party shall have a duty to protect Confidential Information that is (a) marked or accompanied by documents clearly and conspicuously designated as "confidential" or "proprietary"; (b) identified orally or in writing by the Disclosing Party as confidential before, during or promptly after the presentation or communication; or (c) is not generally known in the industry in which the Disclosing Party is or may become engaged and which would reasonably be considered confidential and/or proprietary.
- 4. Standard of Care.** The Receiving Party shall protect the Disclosing Party's Confidential Information with the same degree of care, but no less than a reasonable degree of care, as the Receiving Party normally uses in the protection of its own confidential and proprietary information. The Receiving Party shall use this standard of care to prevent the unauthorized use, disclosure, dissemination, or publication of the Disclosing Party's Confidential Information.
- 5. Exclusions.** The restrictions set forth shall not apply with respect to Confidential Information that: (a) is already available to the public; (b) becomes available to the public through no fault or breach of the Receiving Party, its officers, agents or associates; (c) is independently developed by the Receiving Party without breach of this Agreement; (d) is rightfully received by the Receiving Party from a third party without a duty of confidentiality or other restriction on disclosure; (e) is disclosed by the Receiving Party with the Disclosing Party's prior written approval; or (f) is required to be disclosed pursuant to law. If a Receiving Party is required by a government body or court of law to disclose Confidential Information, the Receiving Party agrees to give the Disclosing Party reasonable advance notice so that the Disclosing Party may contest the disclosure or seek a protective order, subject to applicable confidentiality constraints imposed by such government body or court of law or applicable law. The Receiving Party shall thereafter be entitled to disclose Confidential Information to the extent required by law.
- 6. Proprietary Interest.** None of the Parties acquire any rights in the other Party's Confidential Information under this Agreement except the limited rights necessary to carry out the purposes set forth in this Agreement. This

Agreement grants no license by either Party to the other, either directly or by implication, estoppel or otherwise. This Agreement is not intended, nor shall it be construed, to confer any right upon any person or entity not a Party to this Agreement.

7. **Warranty.** Each Disclosing Party warrants that it has the right to make the disclosures under this Agreement. **NO OTHER WARRANTIES ARE MADE BY EITHER PARTY UNDER THIS AGREEMENT. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS."**

8. **Term and Termination.** This Agreement shall become effective as of the Effective Date and terminate (a) upon ten (10) days written notice from one party to the other, with or without cause; or (b) automatically at the conclusion of the Parties' relationship. Termination of this Agreement shall not relieve the Receiving Party of any of the obligations set forth in this Agreement with respect to the Disclosing Party's Confidential Information. Immediately upon termination of this Agreement or upon written request of the Disclosing Party at any time and for any reason, the Receiving Party shall, if feasible, return to the Disclosing Party all of its Confidential Information in the Receiving Party's possession, including but not limited to, all records, memoranda, drawings, blueprints, manuals, letters, notes, notebooks, reports and other materials containing such Confidential Information, whether created by the Disclosing Party or the Receiving Party, along with all copies, or, if requested, the Receiving Party shall certify in writing that all such Confidential Information has been destroyed. If return or destruction of information is not feasible, the Receiving Party shall continue to maintain information as confidential as is required by this agreement.

9. **Miscellaneous.**

a. The Parties mutually acknowledge and agree that this Agreement shall be construed and enforced in accordance with the laws of the State of Alabama, without regard to the internal law of Alabama regarding conflict of laws. **The Parties acknowledge that they have read and understand this clause and agree willingly to its terms.**

b. Neither Party has an obligation under this Agreement to purchase any service or item from the other Party. Neither Party has an obligation under this Agreement to commercially offer any products using or incorporating Confidential Information.

c. Each Party acknowledges that damages for improper use or disclosure of Confidential Information shall be irreparable; therefore, the injured Party is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies.

d. All additions or modifications to this Agreement must be made in writing and signed by both Parties. This Agreement does not create any agency or partnership relationship. This Agreement is not assignable or transferable without the prior written consent of the other Party. This Agreement applies to all successors in interest.

e. This document contains the entire agreement between the Parties as to the Confidential Information and supersedes any previous or contemporaneous understandings, commitments, or agreements, whether written or oral, as to such Confidential Information.

f. All duties and obligations set forth in this Agreement apply equally to all officers, directors, associates, employees, agents, and representatives of the Parties. The Receiving Party agrees that all Confidential Information will only be made known to employees of the Receiving Party who have a need to know such Confidential Information.

g. This Agreement may be executed in counterparts and transmitted by facsimile.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Benefit focus

BLUE CROSS AND BLUE SHIELD OF ALABAMA

By: Brian Hubbard
(Officer of Company)

By: Rebekah Elgin Council
(Officer of Company)

Printed Name: Brian Hubbard

Printed Name: Rebekah Elgin Council

Title: Director, Customer Operations

Title: Vice President - Marketing

City of Huntsville, Alabama

By: _____
(Officer of Company)

Printed Name: Tommy Battle

Title: Mayor