

## Attachment C

**TAX OBLIGATIONS** If any tax, fee, assessment, and/or penalty is assessed against or with respect to any plan and/or DBI services and DBI is required to pay that tax, fee, assessment, and/or penalty, DBI shall report the payment to the Vendor and will be reimbursed for such amount. The employer is at all times responsible for the tax consequences in the establishment and operation of the health plan. Notwithstanding the foregoing, DBI is solely responsible for any and all payroll or income taxes owed by or assessed against DBI in connection with the conduct of its business.

**CUSTODIAL ACCOUNTS** Appointment as Custodian. DBI is appointed as custodian for the purposes of performing the administrative services. DBI accepts the appointment and agrees to act as custodian and to hold any funds received.

**Custodial Accounts.** DBI has established one or more depository accounts (the "Custodial Account") at Bell Bank in Fargo, North Dakota (the "Bank"). DBI may designate a separate Custodial Account for each type of service being provided hereunder. All amounts deposited in a Custodial Account, less any portion that constitutes fees or other costs that are allowed to be deducted from the Custodial Account, shall become "employer funds." For administrative convenience and to reduce costs, DBI holds the employer funds together with similar funds from other employers in a single Custodial Account (or one or more Custodial Accounts). DBI maintains records as to the exact amount of funds of each employer so that each employer has a legal right to the specific amount of funds held in the Custodial Account.

**Subaccounts.** At all times, the assets comprising each employer's funds in a Custodial Account are considered a separate subaccount. Depending upon the context, the term "Custodial Account," shall refer to either the separate subaccount for the employer or all of the subaccounts for all employers in the aggregate.

**Employer General Assets.** The employer funds are the general assets of the employer. The employer funds are not the general assets of DBI nor are they plan assets within the meaning of ERISA. Except to the extent that outstanding checks have been written against the account on behalf of the employer, employer funds may be withdrawn by the employer at any time (less any applicable fees or expenses) and are subject to the employer's creditors in the same manner as funds contributed to the employer's direct checking accounts.

**Earned Interest.** DBI may receive interest from time to time on the funds held in the Custodial Accounts and any such interest received by DBI shall be part of DBI's compensation. Any fees charged by DBI for the services would be greater if DBI did not retain such interest. The period during which interest may be earned begins on the date the funds are transferred to the Custodial Account and ends when the underlying agreement terminates. All funds are disbursed on a first-in, first-out basis.

**EXTERNAL REVIEW.** To the extent that the external review requirements set forth in 29 CFR § 2590.715-2719 apply to a plan, DBI serves as a conduit for external review requests. In this regard, DBI sends required information to and cooperates fully with the external review organization conducting the review. Any fees and/or expenses related to a request for external review are paid by the employer.

**LIMITED WARRANTY.** DBI represents and warrants that its services are performed in a professional manner consistent with generally accepted industry standards and applicable law. The sole remedy for breach of this limited warranty is DBI's re-performance of the services that fail to meet such warranty.

**DISCLAIMER OF LIABILITY AND LIMITATION OF REMEDIES.** Disclaimer of Liability. DBI assumes no responsibility or authority for: (1) the design, funding or operation of any benefit plan (as defined in ERISA Section 3(1)) or for compliance of any such plan with ERISA, including any aspect of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"); (2) duties incumbent upon a "plan sponsor" or "covered entity" under the HIPAA privacy and security rules; (3) funding of claims for benefits under any health savings account or employee welfare benefit plan or the payment of fees to third parties providing services or products to the employer or its employees; or (4) insuring or underwriting any liability to provide benefits under any employee welfare benefit plan. DBI is not required to use its own funds nor is it liable for the payment of benefits under any plan, including, without limitation, where sought as damages. DBI does not insure or underwrite the employer's liability to provide benefits under any plan. The employer has the sole responsibility and liability for payment of all benefits under the plan.

**Force Majeure.** Notwithstanding anything to the contrary contained herein, there is no breach for failure to perform or delay in the performance of any of the respective obligations hereunder to the extent that such failure or delay results from: any act of God; military operation; terrorist attack; widespread and prolonged loss of use of the Internet; national emergency; government restrictions; or disruption of the financial markets.

**Limitation of Remedies.** DBI is not liable for consequential, special, exemplary, punitive, indirect or incidental damages, including without limitation any damages resulting from loss of use or loss of profits arising out of or in connection with the service provided, whether in an action based on contract, tort (including negligence) or any other legal theory whether existing as of the effective date or subsequently developed, even if it has been advised of the possibility of such damages. In addition, the maximum total liability is limited to damages in an amount not to exceed the fee paid or payable for the twelve-month period prior to which a cause of action arose. No action may be brought more than two years after the cause of action has accrued.

**BOOKS AND RECORDS.** DBI maintains accurate and complete records of all its services, which records shall be the property of DBI and shall be made available to the employer to review at any time during normal business hours. DBI agrees to retain such records for a period of eight years from the time the DBI Services were rendered, including, without limitation, records of all assets and transactions involving any Custodial Account. Upon termination of the agreement, DBI will maintain the employer's records in an electronic format as required by law.

**INSPECTION.** Inspections of any transactions, procedures, records, and files relating to the services provided at DBI's offices and at a time reasonably acceptable to DBI, upon providing ten (10) business days' advance written notice to DBI.

**CALL RECORDING.** In compliance with applicable federal and state law, DBI monitors and/or records calls made to and from the customer service line for quality assurance and training purposes.